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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

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STATE OF ARIZONA,)
Plaintiff,)
vs.) Case No. V1300CR20108-0049
JAMES ARTHUR RAY,)
Defendant.)

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1 REPORTER'S TRANSCRIPT OF PROCEEDINGS
1 BEFORE THE HONORABLE WARREN R. DARROW
1 ORAL ARGUMENT/EVIDENTIARY HEARING
1 RE PENDING MOTIONS, DAY ONE
1 NOVEMBER 9, 2010
1 Camp Verde, Arizona
2 (Partial transcript)

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REPORTED BY
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AZ CR NO. 50619
CA CSR NO. 8335

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WITNESS

DIVERA G. HAMILTON

Direct by Ms. Polk
Cross by Mr. Li
Voir Dire by Ms. Polk
Cross continued by Mr. Li
Voir Dire by Ms. Polk
Cross continued by Mr. Li
Redirect by Ms. Polk

SANDRA M. MARKMAN, CLERK
Stephanie Kling

8 THEODORE M. MERCER

Direct by Ms. Polk
Cross by Mr. Li
Redirect by Ms. Polk

1 DEBRA J. MERCER

Direct by Ms. Polk

EXHIBITS ADMITTED

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Proceedings had before the Honorable

WARREN R. DARROW, Judge, taken on Tuesday,
November 9, 2010, at Yavapai County Superior Court,
Division Pro Tem B, 2840 North Commonwealth Drive,
Camp Verde, Arizona, before Mina G. Hunt, Certified
Reporter within and for the State of Arizona.

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PROCEEDINGS

(The following is a partial transcript --
examination of witnesses.)

MS. POLK: Thank you, Your Honor. The state
calls Amayra Hamilton.

THE COURT: Ma'am, please step to the front of
the courtroom where the bailiff is directing you.
Raise your right hand and be sworn by the clerk.

DIVERA G. HAMILTON,

1 having been first duly sworn upon her oath to tell
1 the truth, the whole truth, and nothing but the
1 truth, testified as follows:

1 THE COURT: Please be seated here at the
1 witness stand.

1 Ma'am, would you please begin by stating
1 and spelling your full name.

1 THE WITNESS: My full name legally is Divera G.
1 Hamilton; D-i-v-e-r-a, G. Hamilton,
1 H-a-m-i-l-t-o-n.

2 THE COURT: Thank you.

2 Ms. Polk?

2 MS. POLK: Thank you, Your Honor.

2 DIRECT EXAMINATION

2 BY MS. POLK:

2 Q. Good morning, Mrs Hamilton Please tell

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The Court what your business is.

A. We have a spiritual retreat center located
just outside of Sedona.

Q. What is that center called?

A. It's called Angel Valley Spiritual Retreat
Center.

Q. When you say located outside of Sedona,
would give the Court an idea geographically where
your center is.

1 A. Geographically we are a couple miles
1 outside of the Sedona city limits. We are two miles
1 off 89A in the direction of Cottonwood between
1 Sedona and Page Springs.

1 Q. The two miles of road from 89A to your
1 center -- is that dirt or paved?

1 A. That's a dirt road.

1 Q. Approximately how long -- can you describe
1 for the Court what kind of road that is.

1 A. It's a dirt road. It's pretty wide. It's
2 easy to pass. It's windy. It's going down. The
2 surface is, well, dirt road.

2 Q. Do you have cell phone service at your
2 center?

2 A. Limited.

2 Q. What is the purpose of the Angel Valley --

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is it Angel Valley resort?

A. No. It's Angel Valley Spiritual Retreat
Center.

Q. Center. What is the purpose of your
retreat center?

A. The purpose of the retreat center is to
have people that come to Angel Valley -- both
individuals and groups -- for -- to do some kind of
form of working on their spiritual growth.

1 Q. How long have you managed that center?

1 A. We came there in 2002. And the first
1 little period was preparation. But we have been in
1 operation since 2003.

1 Q. When you say "we," who else are you
1 referring to?

1 A. My husband, who is co-owner and
1 cointiator of the project. And that's the
1 essence. Besides we are a 501(c)(3), a spiritual
1 religious organization. So we have a board for the
2 ministry. That is, basically, the spiritual,
2 philosophical main part of it.

2 Q. What is your husband's name?

2 A. Michael Hamilton.

2 Q. In 2003 did you begin doing business with
2 James Ray?

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A. We did.

Q. How did you meet James Ray?

A. There was a person in Sedona by the name
of Ed Lee. He has job as kind of doing coordinating
work for people who were looking for ventures. And
he contacted us that he had a person who was looking
for a place where he could do a sweat lodge and a
Vision Quest.

And we said sure. Come. That was in
1 August of 2003. And it was regarded an event that
1 he wanted to do in November of 2003. His main event
1 would take place in Enchantment Resort. And for the
1 sweat lodge and for the Vision Quest he was looking
1 for a place, and we decided to do that, and we did.

1 Q. And how many years subsequent to that did
1 you do business with James Ray?

1 A. Since 2003 once a year every year until
1 2009.

1 Q. You mentioned a Vision Quest?

2 A. Yes.

2 Q. The first year was part of the program on
2 site and part off site at the Enchantment?

2 A. The main part of the program was off site
2 in Enchantment. And they came to Angel Valley for
2 the sweat lodge ceremony and for the Vision Quest.

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Q. Did that change over the years?

A. Yes. The next year he came to Angel Valley for the entire event of six days.

Q. Did his participants sleep at Angel Valley?

A. From 2004 they did. Not in 2003.

Q. Do you know what the event was called by James Ray?

A. Spiritual Warrior Retreat.

1 Q. And are you familiar with the -- how long
1 the Spiritual Warrior Retreat was?

1 A. Six days.

1 Q. Are you familiar with what different
1 events occurred during those six days?

1 A. We receive an itinerary. We were not
1 familiar with what happened inside the spaces when
1 he would have his parts of the program. We were
1 familiar with the preparation of the sweat lodge,
1 which he required from us to do. And we were
2 familiar with the proper preparations of the Vision
2 Quest.

2 Q. Will you tell the Court what the Vision
2 Quest was

2 A. Vision Quest was taking the people out in
2 nature for a certain period. And in this particular

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case it has always been two nights and one day. People would go out in the night, in the evening, in the dark, spend the night out in the country, spend one day outside, one other night. And the next morning they would be returning.

And this required a lot of preparation on our end because regular Vision Quest people go out by themselves and find us. But when you have many people like in his group, it has to be coordinated in a way that everything is safe and manageable.

1 Q. To your knowledge, did James Ray do the
1 Vision Quest all the years that he conducted the
1 Spiritual Warrior seminar at Angel Valley Center?

1 A. Yes, he did.

1 Q. Are you aware whether or not participants
1 in the Vision Quest portion of the seminar received
1 food or water during those two nights and one day?

1 A. They did not receive food. They did not
1 bring food. Did not have food. The first year in
2 2003 the James Ray staff would go out to visit the
2 participants on their sites the next day and brought
2 them water. After that they did not -- they
2 discontinued that. And it was my assumption that
2 the participants brought their own water, which in
2 2009 I found out they did not.

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Q. Are you aware from what year forward participants did not receive water during those two nights and one day?

A. I'm not fully aware. But I --

MR. LI: Your Honor, move to strike after -- everything from this.

THE COURT: And the grounds, Mr. Li?

MR. LI: Lack of foundation. "I'm not fully aware."

1 THE COURT: Again, Rule 104 -- but I would like
1 to know some background if there is some on this.
1 Sustained.

1 Q. BY MS. POLK Mrs. Hamilton, at some point
1 did you become aware that participants in the Vision
1 Quest portion of the seminar did not have any water
1 during the two nights and one day that they were
1 out?

1 A. I was aware. I became aware of that in
1 2009.

2 Q. How did you become aware of that?

2 A. Because one of the participants was very
2 upset. And I attempted to calm her down and
2 suggested she would take some water. And she said
2 she didn't have water with me. I was in shock
2 because I had assumed always that there was water

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with them.

Q. Are you familiar with the order of events between the Vision Quest and the sweat lodge ceremony of the Spiritual Warrior seminar?

A. I am. That changed a little bit over the years. In 2003 and 2004 they would first do the sweat lodge in the evening. And then after the sweat lodge ceremony they would go out on the Vision Quest. And every person that was involved in the preparation of the Vision Quest, which was mainly first and foremost myself, we would be part of helping the people to bring them to the sites.

1 In 2005 the sweat lodge was -- the order
1 was reversed. The Vision Quest was first. And then
1 when they would come back in the morning, they would
1 have the sweat lodge in the evening of that day.
1 And in 2006 and seven and eight and nine, they would
1 do the sweat lodge, also the same duration of the
1 sweat lodge. But then they would come back in the
2 morning for breakfast and they would do the sweat
2 lodge in the afternoon.

2 Q. I believe you might have misspoken. In
2 2006 you said they would do the duration of the
2 sweat lodge. Do you mean the duration of the Vision
2 Quest?

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A. Yes. Yes.

Q. Let's talk about 2006 again --

A. The duration of the Vision Quest was every year the same. And in 2006 they had the Vision Quest one night, one day, one night, returned in the morning, Vision Quest. And then in the afternoon of 2006, seven, eight and nine, they would do the sweat lodge.

Q. Let's talk about the sweat lodge. Was there a sweat lodge, the physical sweat lodge, on the property at Angel Valley Center?

A. In 2003?

Q. Yes

A. There was. There was a sweat lodge that was built to accommodate about 15 people, 12 to 15 people, at the most. That was not big enough. That year James Ray came -- wanted to come the very first time with 39 participants. So that was not big enough.

So we had another -- an additional structure built specially for James Ray so that he could accommodate 40 people.

Q. Was it built for the 2003 sweat lodge ceremony?

A. It was built for -- especially for 2003

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sweat lodge ceremony.

Q. Do you recall the sweat lodge ceremony that James Ray conducted in 2003?

A. I do.

Q. Do you know approximately how many participants he had in the sweat lodge?

A. Yeah. 40.

Q. And are you aware of any problems that occurred during that ceremony?

A. No.

Q. Did you have a conversation with James Ray after the 2003 sweat lodge ceremony about the heat?

A. We did. He said it was not -- he couldn't get it hot enough. So he wanted us to take some measures that it would get hot enough.

Q. And did you?

A. The next year we made more covering. That was the only thing we changed between 2003 and 2004.

Q. And describe for the Court what type of covering you're talking about

A. The covering for the sweat lodge consisted of blankets -- cotton blankets, wool blankets, sleeping bags, moving blankets. And then we had -- in 2003 and 2004 we had a canvas topping over that. In 2004 James complained that it was still not hot

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enough. We may --

Q. Let me stop you there. In 2004 there is another sweat lodge ceremony conducted by James Ray?

A. Yes.

Q. And approximately how many participants?

A. 12.

Q. And you are not aware of any problems with the 2004 sweat lodge ceremony?

A. No.

Q. Do you have a conversation with James Ray after that ceremony?

A. Yes. It was still not hot enough. And I alluded that -- to the fact that it was a sweat lodge that was the same sweat lodge built for 40 people, and he was in there with only 12, which influences the temperature.

Q. Yes. Did you do something in response to James Ray's complaints in 2004 that the sweat lodge could not get hot enough?

A. We did.

Q. And what was that?

A. We increased the covering. We made the covering thicker, plus we acquired a vinyl tarp that we then used as a final topping.

Q. In 2005 did James Ray conduct a sweat

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lodge ceremony?

A. He did.

Q. And you've already testified that 2005 was the year that the Vision Quest in relationship to the sweat lodge ceremony changed?

A. Yes. They did the Vision Quest before the sweat lodge ceremony.

Q. To your knowledge, in 2005 the participants at the Vision Quest did receive water during the 72 hours that they were out?

A. Not to my knowledge.

Q. They did not in 2005?

A. I assumed, and I do not know.

Q. What time of day, then, was the sweat lodge ceremony in 2005?

A. In the evening, in the dark.

Q. Where were you when the sweat lodge ceremony began?

A. When the sweat lodge ceremony began, I was in my office.

Q. Approximately how many participants were in the 2005 sweat lodge with James Ray?

A. I have a little note here with the numbers. Can I just double check?

Q. Yes.

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A. There were 52.

Q. At some point did you become aware of problems at the sweat lodge ceremony conducted by James Ray in 2005?

A. If I can add to that, the reason why I was around towards the end of the sweat lodge ceremony was that we supplied fruit and drinks, and our kitchen staff had gone home. And I decided to take the fruit down towards the end of the ceremony.

1 Until then I was not aware of any
1 problem. When they came out, I was aware that the
1 people were not in good shape.

1 Q. About what time was it that you took fruit
1 down to the sweat lodge?

1 A. It must be between 10:00 and 11:00.

1 Q. P.m.?

1 A. P.m.

1 Q. Was there lighting down there?

1 A. Not much. No. Only the lighting of the
2 fire, which, towards the end of the sweat lodge, has
2 died down. So it was flash lights.

2 Q. When you got down there, was the sweat
2 lodge ceremony still going on?

2 A. Yes.

2 Q. And how long were you there before you

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became aware that there were some problems?

A. When the people came out -- I was there probably about half an hour or so.

Q. Before the people came out?

A. Before people came out. Because I had wanted to make sure I had everything arranged before they would come out. When they came out, it was pretty chaotic. And then I spotted that one man that was not in good shape.

1 Q. Describe to The Court what you mean when
1 you say it was pretty chaotic.

1 A. People came out not in an organized way,
1 not in a way -- people came out stumbling, falling,
1 not -- not in physical good shape. Not, like,
1 coming out -- because the door was very much a
1 small -- like, coming out and walking away. It was
1 they came out stumbling and needed to lie down right
1 away, sit down on the chairs that we had and needed
1 assistance to sit down.

2 Q. Was somebody helping them?

2 A. There were only -- at that event there
2 were only three staff members, who all were also
2 inside the sweat lodge. So I guess they did the
2 best they could to help. But it was dark also. I
2 did not know who was helping who.

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Q. Do you know the names of the three staff members?

A. The main person was Tere Ginerella. The other person was Megan Fredrickson and her husband, Josh Fredrickson.

Q. What did you do, if anything, in response to what you've described as chaos?

A. I helped people, brought them drinks. Those who did not walk over to where the drinks were, I would bring them drinks. I would -- people who were uncomfortable, I would suggest they would control their breathing. People who were shivering and cold, I started tearing blankets off the sweat lodge because I knew how it had been put together. Pulled blankets from under the tarp and wrapped people in blankets, walked over to the next people until there was this one person that was really out of control.

1 Q. How did you become aware of one person out
2 of control?

2 A. He was gesturing wildly. He was calling,
2 making noise. And people were around him, concerned
2 and say what's going on with him. So it's -- yeah.

2 Q. Do you know the name of the person you
2 were referring to?

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A. Daniel Pfankuch.

Q. Describe for the Court -- what did you do when you became aware of him?

A. First I observed. My observation was that I recognized that is one of the symptoms, what happens when a person is in an altered state, where a person is not necessarily unconscious but not conscious of his environment.

My understanding is that this was a
1 typical example of a person that was not fully back
1 into his body. He was not unconscious because he
1 was moving. But he did not hear what we were
1 saying. He didn't hear what anybody was saying. He
1 did not respond to anybody. If people said lie
1 down, he would not. And eventually we did have him
1 lay down.

1 I recognized this condition, but I also
1 recognized this is not something that I know how to
1 handle. I looked around for James Ray hoping that
2 he will be able to handle it. James was not there,
2 and there was nobody else. All the other people
2 didn't even know what was going on.

2 Q. What happened next?

2 A. I got in my golf cart because I thought
2 the only one and help that I can get is calling

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911. But I did not want to do that without letting James Ray know that I was taking that action. James, I had understood by then, that he had left the site to go to his room to take shower. And sure, I found him in his room. And I knocked on his door. And he yelled at me, said I'm in the shower.

And I said I'm going to call 911. And he says -- well, he didn't like that. I said I'll do it anyway. So I took the phone there right in the building where he was, called 911 and returned to the site. At that moment --

Q Let me stop you there. You said James Ray didn't like that. What did he say to you that he --

A He didn't want me to call 911. We can do it ourselves.

Q Did he tell you not to call 911?

A He told me not to call 911. I said I'll do it anyway.

Q Did he know that you -- how did he know what the situation was that you were concerned about?

A I did not think that he knew what the situation was because he had walked away before he could see what was going on.

Q And did you tell him anything?

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A I was hoping that by telling what I did that he would understand something serious was happening.

Q Do you recall what you told him?

A Not exactly.

Q Did you tell him that something serious was going on?

A Yes.

Q And then what happened?

A So I went back to the area. And by that time Daniel was laying down. His wife was with him.

Q And I'm sorry to interrupt you Did you call 911?

A I did. In the building where James was. And then took my golf cart, drove back to the site, which is just a minute, and found Daniel laying down on the ground with people around him, but first and foremost his wife. And his wife was telling him how much she loved him and how his children loved him and how his children needed him. And I remember very clearly that I encouraged her to keep doing that because that I knew is one of the ways to get a person back into their situation. If you appeal to them via the things they love, that are dearest to them.

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Q Did you observe whether Daniel was conscious?

A At that moment he was calm but still not responding.

Q What do you mean by "not responding"?

A He did not respond to anything anybody said or did. But he was calm.

Q Did he appear to be awake?

A If awake means that a person is moving somewhat, yes. But if awake means a person is in communication with whatever is going on around them, no. He was not.

Q What happened next?

A What happened next was that James walked back, either walked or drove golf cart. I don't remember. Came back to the site, saw me and started yelling at me.

Q What did James Ray say to you?

A I do not know the exact words. I do remember how I felt. I do remember how the people around him responded. Everybody was in shock. The people around him looked at him, had never experienced James falling out like that.

I -- the gist of what he said, he told me that he didn't want me to be there with his people.

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And I said okay. So I got up, got in my golf cart, went to the gate because I knew that the ambulance would be coming soon. And then when I was at the gate. I could drive them directly to where things were going on.

Q About how far is that gate up that two-mile road up to 89A?

A Two miles.

Q But the gate to enter your property is what?

A We're at the end of the road.

Q Is it a gate that is locked?

A Normally is closed. Yes.

Q In other words, for someone to enter the property, the gate has to be opened by somebody?

A Yes. So I opened it, and I could then drive in front of them so that they do not have to search, to look for where do we have to go with the ambulance.

Q Did you, in fact, meet the ambulance at the gate?

A Yes.

Q How long would you say you it took the ambulance to get there from the time you called?

A I would say 15 minutes. They were there

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very fast.

Q. And then what happened once the ambulance got there?

A. Once the ambulance got there, they treated Daniel and -- to the best of their ability. And he was still not present. They carried him into the -- inside the ambulance and continued and hooked him up on things. I do not know the medical details of that.

1 And by then Daniel came to. And he said I
1 don't have to go to the hospital. And they said we
1 better. And I agreed, totally agreed. And his wife
1 agreed too. It's better to check him out. So they
1 went to the hospital. And they had him --
1 dehydrated --

1 MR. LI: Objection. Move to strike all the
1 stuff that happens at the hospital. Lack of
1 foundation.

1 THE COURT: I don't think there is any personal
2 knowledge of that. I'm not going to consider that.
2 But, again, in this context. I'm not going to
2 assess that weight.

2 Please continue, Ms. Polk.

2 Q. BY MS. POLK: Mrs. Hamilton, after Daniel
2 Pfankuch was taken away in the ambulance, what did

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you do?

A. After that whoever needed any other care, I did. And then everybody went to the rooms and took care of themselves.

Q. Were there additional people at the site who still seemed to need care?

A. Not that I remember. Other than -- not other than sitting there for a little while and having drinks and being wrapped up. But by that
1 time the people started to go to their rooms.

1 Q. Did you go to the hospital where Daniel
1 Pfankuch had been taken?

1 A. Not that night. The next morning he came
1 back, and he was very cheerful and very -- yeah. He
1 felt well, he said, and he was -- well, actually he
1 was talking that he had a great experience because
1 that when he was out there, the situation that we
1 were so concerned about, he said he had a great
1 time.

2 Q. And, Mrs. Hamilton, did you have any
2 further conversations with James Ray about what had
2 happened to Daniel Pfankuch?

2 A. Yes, I did.

2 Q. When did those conversations take place?

2 A. The next morning. Because this was at the

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end of the retreat. So the next morning they would be leaving. Yes. I talked with James.

Q. And what was that conversation about?

A. I was very upset with him. I told him that what happened was absolutely totally unacceptable. I never wanted him to ever have a situation that that would occur again that I would have to call 911. And I also I was upset about him yelling at me.

1 He apologized to me for both. He
1 apologized specifically for yelling at me, and he
1 apologized for this having occurred.

1 Q. What did he say about the event that had
1 occurred, if anything?

1 A. The only thing he said was that he
1 apologized and that he would take his measures that
1 it would not happen again. And I trusted that that
1 was what was going to happen. I would see him next
1 year.

2 Q. You continued to contract with James Ray?

2 A. We have already set things in motion. And
2 when something unfortunate or something undesired
2 happens, I think it's just common sense to expect
2 the person learns from the situation and adjusts
2 their ways of doing things.

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Q. Yes. The order of events between the Vision Quest and the sweat lodge -- did that change after the 2005 incident with Daniel Pfankuch?

A. What changed was that James Ray made the schedule such that the sweat lodge was in the afternoon rather than in the evening.

Q. And how close in time to the Vision Quest?

A. The people would come back from the Vision
1 Quest in the morning before breakfast. And then the
1 time between the Vision Quest and the sweat lodge
1 was shorter when he did the sweat lodge in the
1 afternoon rather than in the evening. The advantage
1 was that it was daylight.

1 Q. Prior years there was more time between
1 the Vision Quest and the sweat lodge?

1 A. In the one year that that was the order,
1 that Vision Quest was before the sweat lodge, in
1 that year the time between the sweat lodge was
2 between -- between the Vision Quest and the sweat
2 lodge was that they came back -- would return
2 after -- before breakfast. And the sweat lodge
2 ceremony would be in the evening starting at 8:00 or
2 so. And in 2006 it was the first time that the
2 sweat lodge was starting at about 3:00.

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Q. Let me back up little bit. Are you able to remember what month the 2003 Spiritual Warrior seminar occurred?

A. 2003 it was in November.

Q. And for 2004?

A. There was one year in August. And I don't remember exactly which year that was. Most of them were in September. The last one -- two were in October. Last year was in October. Another one was in October. And then one year it was in the end of August.

Q. Do you know what month the seminar was held in 2005?

A. I would have to check on that.

Q. Okay. With regard to the 2006 Spiritual Warrior seminar and specifically the sweat lodge ceremony conducted by James Ray, did you have any discussions ahead of time about what would occur?

A. They wanted more fruits and drinks than we had in 2005. There were things in 2005, but they wanted a little more. Okay. That's what we did. And James would have one or two people of his staff, of his team, outside of the sweat lodge. And in 2005 everybody was inside.

Q. And you told us earlier that the sweat

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lodge was built to hold 40 people?

A. The one built in 2003 would hold 40 people. And that one was also used in 2004.

Q. What was used in 2005?

A. In 2005 we had a new one that accommodated 50, around 50 people. And a new one was built in 2006 also accommodating 50 people. And then in 2007 James announced that his group would be larger -- sorry. Not James. His staff announced that the group would be larger, so could we have a sweat lodge built for 75 people.

Q. Let me just back up a little bit. For 2006 the sweat lodge was designed to hold?

A. 50.

Q. And how many people, in fact, were in that ceremony?

A. 42 or 43.

Q. Did you have any discussions with James Ray for the 2006 sweat lodge ceremony pertaining to dividing up into two groups?

A. Yes. When I say "I," the part of that communication went through my husband, Michael. He would normally do all the details of the contract interaction until the contract was complete, and then our staff would take it further. The

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discussion around the site of the sweat lodge --

MR. LI: Your Honor, move to strike anything that's not from the witness' personal knowledge.

THE COURT: I'm going to note when it's not.

You may continue, Ms. Polk.

Q. BY MS. POLK: You can continue. Thank you.

A. As a co-owner and as a co-responsible person, I was an integral part of also making the arrangements, especially after what happened in 2005 and after the discussion that we had about changes have to be made.

When the size of the sweat lodge was discussed in 2007, both my husband and I were adamant about please -- and we had to communicate through his staff -- please split the group in two. Do two ceremonies so that you do not have to go larger, that there will be two ceremonies for, let's say, 30 or 40 max, which is already a large group.

James Ray -- we heard through his staff that James was in no way willing to do that. He wanted to do it himself. He wanted to have the group all together. Our suggestion, if he cannot do -- physically do two ceremonies back to back by himself, to bring somebody else in who would do the

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other group.

That was totally unacceptable. We were even willing to build another lodge so it could happen simultaneously. There was no way that James was willing to discuss any of that. He wanted to do it in one group, and he wanted to have a lodge for 75 people. Could we do that.

Q. Did this discussion that you just testified about occur prior to the 2006 --

A. 2007.

Q. Prior to the 2007 sweat lodge?

A. Yes.

Q. Let me back up you up for a moment, then. In 2006 were there any -- immediately following the 2005 problems, were there any problems that you noticed in 2006?

A. No. I was very adamant and I was there --

MR. LI: Move to strike. I've not objected to the constant narrative. But I'd rather ask if the witness could simply answer the questions.

THE COURT: There was a response to the question.

Ms. Polk, please ask another question.

Q. BY MS. POLK: Did you have any concerns or observations about 2006?

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A. In 2006 I was -- after what happened in 2005, I was very adamant to be around there all the time during the ceremony, from the beginning to the end. And there was no reason for me to think that he would not have taken what happened in 2005 into some consideration so the situation was acceptable.

Q. Why is it, then, that for 2007 you had conversations with James Ray and his staff about dividing up into two groups?

1 A. Because if -- one of the reasons that I
1 saw that accidents can happen is if the group is too
1 large. And the group -- a group of 40 or 50 is
1 already very large. If you even increase that --
1 for me that was not a number of participants that
1 would increase the safety. On the contrary.

1 Q. Did you become aware, then, that for 2007
1 James Ray wanted to -- that he actually had more
1 people enrolled in his seminar than in past years?

1 A. He did. Because in 2007 they were with 71
2 people, of which probably four were not inside the
2 lodge. But I do not know exactly that number. But
2 the total of people who were there including James
2 Ray himself was 71 people.

2 Q. How did you resolve, then, the concern you
2 had with the group being too large and the

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discussion you had with James Ray about splitting up into two groups and conducting two ceremonies?

A. We found somebody who was willing and able to build a sweat lodge that could host 75 people.

Q. Who was that, if you recall?

A. In 2007? I do not recall exactly his name. He was Native American man from Prescott. I could find his name.

Q. So, in fact, you had a new sweat lodge
1 built for 2007?

1 A. Yes.

1 Q. Were you on the property or involved in
1 the sweat lodge ceremony that was held in 2007?

1 A. In 2007 I went by -- I came by towards the
1 end of the sweat lodge and saw it was in pretty good
1 order. And besides, by then we had a general
1 manager, and he was mostly present. He was present
1 during the entire ceremony. So I also left part of
1 his observations to him.

2 Q. Who is that general manager?

2 A. That general manager is Gary Palisch.

2 Q. In 2008 were you involved at all or on the
2 property for the sweat lodge ceremony conducted by
2 James Ray?

2 A. I was not involved in the sweat lodge

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ceremony because by then our general manager was fully in charge, and my husband and I were more in the background.

Q. Was a different lodge constructed from 2007 to 2008?

A. Yes.

Q. And why was that?

1 A. Because the structure as was built in
1 2007 -- we were not totally happy with it. It
1 didn't seem so stable. So we decided to have a new
1 one built.

1 Q. Do you recall who built the lodge for
1 2008?

1 A. That was designed by David Sitting Bear.
1 He has a great reputation of building sweat lodges
1 and has also built larger sweat lodges that could
1 hold even over a hundred people. And his nephew,
1 Brian Hornbeck, was actually doing the work.

1 Q. How many people was the 2000 -- sweat
2 lodge designed to hold?

2 A. Also 75.

2 Q. Do you know Ted and Debby Mercer?

2 A. I do.

2 Q. Are they employees of Angel Valley Center?

2 A. They are not.

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Q. Did you contract with the Mercers?

A. Last year in 2009 we did.

Q. And they were on the property in 2007 and 2008?

A. 2007 they were just assisting as volunteers. In 2008 they were on staff. And in 2009 they were no longer on staff, but we hired them to -- we contracted them.

Q. The sweat lodge that held the ceremony
1 performed in 2009 -- was that a new sweat lodge?

1 A. The structure?

1 Q. Yes.

1 A. No. That was the same that we used in
1 2008.

1 Q. Will you describe just generally for the
1 Court what the sweat lodge is made of.

1 A. The structure you mean?

1 Q. Yes

1 A. The structure of the sweat lodge is made
2 of willow branches. They have to be young and they
2 have to be flexible. Otherwise they cannot bent in
2 the shape that they need to be done. The sweat
2 lodges that we have had at Angel Valley were always
2 built in the tradition of the Native Americans by
2 people who were Native American or closely related.

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The way they are tied together is with ropes. There is a certain traditional way of tying the ropes. Everything goes with prayers so that the whole building of the sweat lodge is in itself a ceremony, a sacred ceremony, by itself.

Then when the structure is up, before each ceremony covering is brought up on that, as you asked about before.

Q. And, Miss Hamilton, I'm going to show you some photographs taken by the Mercers in 2008 and ask you if you recognize these photographs.

MR. LI: Could we see them first, Your Honor.

THE COURT: You will see them before I do, if I do see them.

Q BY MS. POLK: Do you recognize those photographs I just showed you, Miss Hamilton?

A. Yes, I do.

Q. What are they of?

A. They are of -- when the structure of the sweat lodge as we used in 2008 and 2009, when that was erected and the Mercers were part of the erection.

Q. Do they illustrate what you just described to the Court about the willow branches?

A. Yeah.

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MS. POLK: Your Honor, I move for the admission of Exhibit 16, 17 and 18.

MR. LI: No objection, Your Honor.

THE COURT: Those exhibits are admitted for this hearing.

(Exhibits 16, 17 and 18 admitted.)

MS. POLK: Your Honor, may I publish them?

THE COURT: You may.

Q. BY MS. POLK: Mrs. Hamilton, I put on up on the screen Exhibit 16. Can you tell the Court what that illustrates.

A. Illustrates that in the foreground you see the branches as they have been collected. And then because they are freshly cut, they are able to bend them over in the shape that they want. And then they are tied together with the ropes in the traditional way.

Q Who are the three people that are shown in that photograph, if you know?

A. The only -- it's Brian Hornbeck. And I do not -- I know. The person in the middle -- that is a volunteer that was at the Angel Valley at the time from Germany. And I think the person on the side is Ted Mercer.

Q And I'm going to put up on the screen

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Exhibit 17.

A. That photo is taken almost at the same time when they were having only the round bars that go up.

Q. And I'm going to put up on the screen Exhibit 18. What does that show us?

A. That looks like the whole structure as completed when first the round bars that went up. And then they put another branches, little branches, around so that that holds the structure. As you may also see because of the size of the structure that in the middle there are some additional support structure that are usually not used for smaller sweat lodges.

Q. And what happens after this frame is built?

A. In the foreground you see the door. The opening where you see larger, that is the door facing east. That is where the people get in and out.

Q. And I believe you can actually -- with your hand you can draw on it to show where the door is. I can show you. Press here first.

A. That's where the door is.

Q. Is this structure then covered with

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something?

A. And then this structure is covered with all the blankets. For us it was very important to have as much as possible natural fabrics coming over. So there is a thick layer of fabrics. And we needed -- for this size of structure we needed a lot of blankets to cover this.

MR. LI: I'd like to object to this line of questioning only as a time-saving issue. I'm not sure what the relevance of this is. We understand there is a sweat lodge. It was built. There are many pictures that indicate what the sweat lodge looks like and how it was built.

THE COURT: Ms. Polk, what is the relevance of this line?

MS. POLK: Your Honor, I think my next question will show the relevance.

THE COURT: Okay. Go ahead.

Q. BY MS. POLK: The materials that were used to cover the sweat lodge -- where did they come from?

A. We had collected them over the years to -- and make sure we had enough covering to keep the heat in and to have enough thick covering that if we covered it with a tarp that there was a thick layer

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of blankets.

Q. Did you use the same materials that were used in 2009 to cover the sweat lodge? Did you use those same materials in previous years?

A. Yes. We have the materials that were used in 2009 were used in 2005 six, seven and eight and were used during sweat lodge ceremonies with James Ray and also other groups.

Q. Where did you keep the materials when they were not in use?

A. We have a -- one of our well houses is log building surrounded one of the wells, this newly made structure with a concrete floor. And that's where we kept the blankets.

Q. Do you know where the logs came from that were used in the sweat lodge ceremony in -- this is 2008. Did you use the same logs between 2008 and 2009?

A. For the fire, you mean?

Q. No. I'm sorry. For the structure itself, the willow branches.

A. Oh. The willow branches. They were collected around the creek around the property.

Q. They're cut on site?

A. Yes.

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Q. Both years, 2008?

A. Yes.

Q. And logs that are burned in a fire to heat rocks; is that correct?

A. Yes.

Q. Where did those logs come from that are used to heat the rocks?

A. Every year it was dead wood that we would find on the property. In 2009 in addition we also used leftovers of cedar logs that we had used for building our cabins.

Q. And I jumped ahead a little bit in talking about how stones or rocks are heated in the fire. Explain to the Court how that works.

A. In the fire pit is the rocks that will be used. And during the ceremony that are brought into the lodge are heated up in a fire outside of the sweat lodge. There was a specific type of volcanic rock that worked very well for that purpose. And our location is along Oak Creek, and we have rocks all over the place. So we would collect rocks along the creek.

Q. You made mention of the fact that other people have performed sweat lodge ceremonies at the Angel Valley Center; is that correct?

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A. Yes.

Q. When you say "other people," do you mean other groups?

A. Other groups.

Q. Does Angel Valley Center host other retreats?

A. We host other retreats. And some of the retreats it would usually be three or four in a year that would ask to have a sweat lodge. We would provide the space and the material, and we would usually also -- for most of the groups we would also provide a Native American facilitator to do the ceremony.

Q. About how many other ceremonies were performed in the sweat lodge of 2008, which is the one up here on the screen?

A. Five.

Q. And about how many other ceremonies had been performed in the sweat lodge used in 2009?

A. This one was built in 2005. And in 2008 -- and was used in 2009. And that particular structure there have been five.

Q. Okay. With regard to other sweat lodge ceremonies performed at Angel Valley Center for other groups, did I hear you just say that you

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provided the facilitator for the ceremony?

A. Yes.

Q. For the all the other events? For the all the other sweat lodges?

A. Yes. It would be the request of the group. Sometimes the group would have somebody in mind, and they asked us to arrange that. Sometimes they would ask do you know a Native American person who can do that. For two of these ceremonies the person who actually made this structure, he performed the ceremony with a group, one with group of 50 and another with group of 20.

Q. Are you aware of any problems that ever occurred in sweat lodge ceremonies performed by any group other than James Ray?

A. Never ever. Not even close.

Q. And does that go all the way back to 2003 and the previous sweat lodge structures that we've talked about?

A. Absolutely.

Q. James Ray is the only one who has ever had problems with his sweat lodge ceremonies?

A. Yes.

Q. Did James Ray ever ask you to find or provide a facilitator for the sweat lodge ceremonies

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for him?

A. No.

Q. Did he personally perform every sweat lodge ceremony from 2003 through 2009?

A. Yes, he did.

Q. Are you familiar with what the role of the person who conducts the sweat lodge ceremony is?

A. From my perspective --

MR. LI: Objection, Your Honor. This asks for

1 a yes or no.

1 THE COURT: That's true.

1 Q. BY MS. POLK: Are you familiar with the
1 role of the facilitator?

1 A. Yes, I am.

1 Q. And tell The Court what that role is.

1 A. That role is that the person who
1 facilitates is first and foremost responsible for
1 the condition of the people as they are in the
1 lodge. They are supposed to know how everybody is
2 doing. And if it's not clear how everybody is
2 doing, to check on them and take measures.

2 MR. LI: Your Honor, move to strike. This is
2 improper opinion evidence, expert evidence too and
2 unqualified.

2 THE COURT: Ms. Polk?

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MS. POLK: You want me to respond to the objection?

THE COURT: Yes, if you would.

MS. POLK: Your Honor, I can establish a little bit more foundation for Mrs. Hamilton. This is not expert testimony, simply the testimony of the person who owns and manages the center where the sweat lodge ceremonies have been performed over the years. I can establish foundation that she herself
1 is familiar with sweat lodge ceremonies, and I can
1 ask her a few questions in that regard if the Court
1 would like.

1 MR. LI: Your Honor, if all Ms. Polk wants to
1 elicit from this witness is what she expects on her
1 land, I have no objection. If it's some broader
1 testimony about how sweat lodges are operated
1 throughout the world, then I would object.

1 THE COURT: Ms. Polk, yes. If you're offering
1 it just for her expectations, if that's the limits
2 of this, that's fine.

2 MS. POLK: That's fine, Your Honor.

2 Q. Mrs. Hamilton, have you been in sweat
2 lodge ceremonies yourself?

2 A. I have.

2 Q. And about how many?

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A. About 10.

Q. Have you been --

MR. LI: Your Honor, I'm sorry. Just to speed things up, I don't need the foundation if that's all she's going to testify about. So I'll withdraw my objection.

THE COURT: Okay.

Ms. Polk, continue.

Q. BY MS. POLK: What is the role of the
1 person conducting the sweat lodge ceremony inside
1 the sweat lodge?

1 A. First and foremost be responsible for the
1 people who are in there. Second, to determine how
1 many rounds of sweat lodge ceremony is going to be
1 and how many stones in each round will be brought
1 in; how long the door will be open between the
1 rounds; whether a facilitator allows people to leave
1 the sweat lodge, yes or no; to allow people whether
1 they can bring water inside the sweat lodge, yes or
2 no; to feel when it is time to do something, yes or
2 no.

2 That's what I see as the role of the
2 facilitator.

2 Q. Is there a title given to the person other
2 than facilitator who is conducting the ceremony?

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A. I prefer to stick to the term facilitator.

Q. Does the facilitator -- you mention the facilitator calls for the number of stones.

A. Yes.

Q. Explain a little bit for the Court what you're referring to.

A. In traditional Native American sweat lodges, usually there are four rounds, and each round there are four, five or six stones are brought
1 in. Total of 20 stones are usually brought in.

1 James Ray chose to do seven rounds, and in
1 each round he would have 7 or 8 or 9 or 10 stones
1 brought in.

1 Q. And these are the stones that we referred
1 to that are getting heated up inside the fire pit?

1 A. Yes.

1 Q. What happens to the stones once they're
1 brought inside the sweat lodge?

1 A. Inside the ceremony -- inside the sweat
2 lodge there is a pit where the stones are in. And
2 then they give off heat. Then usually water is
2 poured over the stones, which gives off steam, which
2 increases the heat. And then oftentimes they
2 sprinkle some herbs on it. Native Americans usually
2 use sage for that.

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THE COURT: Ms. Polk, if we can take a recess at this point. It's been 90 minutes.

Mrs. Hamilton, the rule of exclusion has been invoked in this hearing. That means you can't talk about your testimony or the case with any other witness until the hearing is complete. You can talk to the attorneys. Please watch your step.

Let's recess until 11:00. Thank you.

(Recess.)

1 THE COURT: The record will show the presence
1 of defendant, counsel. And Mrs. Hamilton is on the
1 stand.

1 MS. POLK: One matter before I continue,
1 Mr. Hamilton.

1 Michael Hamilton is the spouse of Amayra
1 Hamilton. He will not be a witness at the 404(b)
1 hearing. He will likely be a witness at trial. He
1 would like to be in the courtroom for the remainder
1 of this testimony.

2 THE COURT: Mr. Li?

2 MR. LI: We ask that he be excluded. He will
2 be a witness at trial and his wife is currently
2 testifying. I think the better course would be for
2 him to be outside.

2 THE COURT: It's come up before. I don't think

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there is a clear law. I think it's a discretionary matter. I'm going to have the rule apply for this hearing and not have people known to be witnesses in the future be present as well. I think it's a good idea not to have that.

So thank you, sir.

MR. LI: Thank you, Your Honor.

1 Q. BY MS. POLK: Miss Hamilton, with respect
1 to James Ray and his level of supervision of the
1 Spiritual Warrior seminar conducted at the Angel
1 Valley Center, could you describe his level of
1 supervision.

1 A. James Ray had very specific instructions
1 for each and every event that took place at Angel
1 Valley. He had very specific instructions to his
1 staff to make sure every little detail was checked
1 out, discussed beforehand, checked out on site. If
1 anything was not according to his desires or his
1 wishes, he would let us know via staff, and we would
2 act accordingly.

2 Q. Thank you. Let's talk about the sweat
2 lodge used for the 2009 sweat lodge ceremony
2 conducted by James Ray. Your testimony is that that
2 is the same structure that was used in 2008?

2 A. Yes, it is.

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Q. And is it the same blankets and coverings as well?

A. The same blankets and coverings.

Q. How many participants were involved in the 2009 sweat lodge ceremony conducted by James Ray?

A. Including James Ray there were 55 people inside the structure during the ceremony.

Q. How many were outside?

A. Five.

1 Q. Do you know how many rounds James Ray
1 held, how many he conducted?

1 A. Eight.

1 Q. And do you know how many stones were used?

1 MR. LI: Your Honor, these are yes or no
1 questions. Do you know? How do you know?

1 THE WITNESS: Yes, I do.

1 Q. BY MS. POLK: And how many were there?

1 MR. LI: Sorry, Your Honor. The next question
1 would be how do you know. This is hearsay.

2 THE COURT: That's true. There is a lack of
2 foundation. And if it's significant, I can't assess
2 it much weight, give it much weight, if I don't have
2 some foundation.

2 Ms. Polk?

2 Q. BY MS. POLK: How do you know how many

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stones were used by James Ray in the 2009 sweat lodge ceremony?

A. After the ceremony, after we had access to the site, after the detectives cleared the site, all the stones were still in the pit that was inside the structure. And there were 55 stones.

Q. Who counted them?

A. We did with a lot of people.

Q. You personally were involved with others?

1 A. Yes. We kept all the stones on the site
1 there. And we have used them to make a memorial
1 site. And there are 55.

1 Q. Thank you. Were you on the property in
1 2009 in October when James Ray conducted the sweat
1 lodge ceremony?

1 A. I was.

1 Q. And in 2009 tell the Court the
1 relationship and timing between the Vision Quest and
1 the sweat lodge ceremony.

2 A. The timing was that the people came back
2 from the Vision Quest in the morning before
2 breakfast around 7:00, 7:30, would have breakfast;
2 and the sweat lodge started in the afternoon around
2 3:00. Actually at exactly 3:00 they started to get
2 in.

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Q. And the participants had been out on the Vision Quest for how many days and how many nights?

A. Two nights and one day.

Q. Were you at the sweat lodge ceremony when it first began?

A. I was at the site when they entered the sweat lodge.

Q. Let me show you what's marked as Exhibit 14. Do you recognize this as a photograph that you took?

A. I recognize as a photograph that I took.

Q. And what does it show?

A. It shows the people standing in line before when they had started to enter the lodge.

THE COURT: Ms. Polk, if you would provide the exhibits to Mr. Li.

MR. LI: Your Honor, she did. Thank you very much.

THE COURT: What's the number of that?

MS. POLK: This is Exhibit 14. Your Honor, I move for the admission of Exhibit 14.

THE COURT: Any objection?

MR. LI: No, Your Honor.

THE COURT: 14 is admitted.

(Exhibit 14 admitted)

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MS. POLK: And may I publish it?

THE COURT: You may.

Q. BY MS. POLK: Can you use your finger on the screen to point out to the Court what perhaps is obvious, but where the is sweat lodge itself?

A. Over there.

Q. And this photograph was taken before?

A. This photograph was taken when the group had started to enter the lodge. And you see the person here with the blue shirt. She is standing right in front of the opening where a previous person had just entered.

Q. What were you doing when everybody was entering the sweat lodge?

A. Watching.

Q. And taking photographs?

A. And I took a few photographs.

Q. What did you do after everybody went inside?

A. I wanted to take some photographs of the lodge as it was in progress. So I took a few pictures from the other side where the people of his volunteer staff, called the "Dream Teamers," where they were standing around the lodge.

Q. You just used a term. You used a term,

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Dream Team. Tell The Court what that refers to.

A. James Ray would bring some people of his staff, and he would also bring some people, volunteers. And the volunteers were usually people who had been participating in other events of his and volunteered to be part of the event to assist with the procedures. And James Ray called those people, that team, the "Dream Team."

Q. Were Dream Team members inside or outside the sweat lodge?

A. Both. There were some outside. There were some inside.

Q. Were you familiar with one of the deceased in this case -- Liz Neuman?

A. Yes.

Q. Was she a Dream Team member?

A. She was a Dream Team member.

Q. After you took photographs, what did you do, Mrs. Hamilton?

A. Then I went to my office.

Q. At some point did you come back down to the sweat lodge?

A. I came back down to watch the end of the sweat lodge.

Q. And why did you come back down?

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A. Because I was restless. I had uneasy feelings.

Q. Do you know what round approximately it was that you came back down to the sweat lodge site?

A. The sixth round.

Q. What did you find when you got there?

A. I found some people sitting outside. And they were not very comfortable. I found some people of the staff, in particular one person of our staff and the coordinator of James Ray. They were very upset about what they heard, what they observed.

So I talked with them. And I said in particular to the one person of our staff, if it is true what you are feeling, what you're hearing, we need to be present, because then these people need assistance the moment they come out.

Q. Who is that staff member you're referring to?

A. Fawn Foster.

Q. What happened next?

A. I waited around and until they started to come out. And then I saw what they were fearing, that it was very true that people needed assistance.

Q. Tell The Court what you observed that made you aware of that fact?

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A. People would come out stumbling, not being able to stand, falling down almost over each other. And they did come out in a one-by-one fashion, which was different from what I saw how the happening in 2005.

But many of them were in bad shape. And they were already when I came down there. And in the round that I saw happening in between before the total procedure was over, the people that had come out were not in good shape. The James Ray staff, Dream Teamers and staff, would use hoses to cool them down. Many people were not -- obviously not feeling well.

Q. What did you do?

A. I did whatever I could to assist any person that I saw. Bring them water, again started to tear blankets from under the final cover of the sweat lodge. And most of all looking where somebody needed the most help. Because there was so many people -- they started to come out, there was so many people that needed assistance that I did not stay with one person in particular.

Q. And after rendering assistance to those people that you could, what did you do?

A. Then at some point the person who was

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leading the fire, she said that people really, really needed help. We had to call 911. Later we found out that the two that eventually were found dead. And when she said we need to call 911, I jumped on my golf cart to go to a phone. And she jumped on another golf cart to go to a phone. We both called 911. She was just a second before me. So that's why her voice has been heard. My voice has been recorded.

When I called the 911 people, they told me that they had somebody on the line. Was that the same place? I said yes, it is. So then -- okay. I left and went back to the site to see whatever I could do to assist. And another thing. We had one of our staff who was a retired nurse, and I went to find her.

Q. Who is that?

A. Sue Ellen Chaney-Tromber, Tromber-Chaney.

Q. And who is your other -- you mentioned that the other person who called 911. Who was that?

A. Debby Mercer.

Q. After calling 911 where did you go?

A. To first find that person of our staff who could -- so that we would have everybody on board who could give any assistance that we would be

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around.

Q. Then what did you and your staff nurse do?

A. Our staff nurse had the same -- she stayed with one person in particular who was -- also came out of the lodge in a very poor state. And she was taking care of him until the paramedics came and took over for her. And she assisted wherever she could, whatever she needed, whatever she saw, who help was needed with her that's a trained nurse's eye.

Q. Can you estimate approximately how many people were in some form of physical distress.

A. At least 30.

Q. You testified earlier about what happened to Daniel Pfankuch in 2005. Did you see anything in 2009 that was similar to what you had observed in 2005 with respect to Daniel?

A. Yes.

MR. LI: Your Honor, I'm going to object. I'm assuming she's not going to make a medical diagnosis. If it's just what she saw, I have no objection.

THE COURT: I'm assuming just purely observation?

MS. POLK: Yes.

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THE COURT: You may continue.

Q. BY MS. POLK: What was it that you observed in 2009 that reminded you of what had happened to Daniel?

A. I saw one person who was completely losing her mind, who was surrounded by some people who were trying to help her. She did not hear them. The similar observation that I had with Daniel.

Q. Do you know the name of that person?

A. Christina Bevins.

Q. And were you with her?

A. I was standing three feet away from her. And since there were people around her who were helping her, who I do not know who they were, but people from the group -- I observed that Christina was evidently -- she was calling for James Ray. She was calling James, help me, James, help me.

And James was standing on the other side 15 feet away, and he looked at her. He heard her yell because she was loud. And he did not come over. And I was in shock. How could he do that?

Q. What was done for Christina Bevins?

A. They tried to calm her down, gave her water, tried to make her drink, held her in their arms and tried to talk to her. And eventually she

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came to. She did not have to wait until the 911 people come.

Q. How long, Miss Hamilton, were you at the scene of the sweat lodge itself in 2009 after the ceremony ended?

A. Until 4:00 o'clock in the morning. Not on the site but with the people.

Q. How long were you on the site?

A. I would estimate until 7:30ish because by then most of the people had been going to their room and were requested to go to the dining room. By that time I knew that two people who had been taken to the hospital had died. So I knew that there would come a point that that had to be shared with the group.

So when the police was kind of -- the detectives were taking the place for the research. And when I knew the --

MR. LI: Your Honor, I'm going to object. All this is irrelevant.

THE COURT: Sustained.

Q. BY MS. POLK: Mrs. Hamilton, you've made several references to rounds. And it occurs to me I probably got ahead in terms of your testimony. Can you explain to the court how a sweat lodge ceremony

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is conducted and what you mean when you say a "round."

A. A facilitator asks the people who are conducting the fire to bring in the rocks. And then they are put in the pit. And then when the rocks, determined by the facilitator, are complete, then they close the door. And then the facilitator will do prayers, songs. That depends on how a person is leading the ceremony. Meditation.

Q. Would that be one round?

A. And then at the certain point the facilitator would determine that we will open the door again and bring in more stones. So a round is from when the door closes to when the door opens again. That is a round.

Q. Approximately how long, if you know, were the rounds when James Ray conducted sweat lodge ceremonies?

A. Between 10 and 15 minutes.

Q. And inside that sweat lodge once the door is closed, is there any light?

A. No.

Q. How dark is it?

A. Dark. Completely dark.

Q. And you testified that for the 2009 sweat

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lodge ceremony you believe there were eight rounds?

A. Yes.

Q. You said it started at 3:00 p.m. Do you know at approximately what time you were there -- what time did it finally end? Do you know?

A. The people started to come out after 5:00, 10 past 5:00.

MS. POLK: May I have a moment, Your Honor?

THE COURT: Yes.

BY MS. POLK: Thank you, Mrs. Hamilton. Your Honor, I have no further questions at this time.

THE COURT: Thank you.

Mr. Li?

MR. LI: Thank you, Your Honor.

(Pause in proceedings)

CROSS-EXAMINATION

BY MR. LI:

Q. Good morning, Mrs. Hamilton.

A. Good morning.

Q. You and your husband, Michael Hamilton, you own and operate the Angel Valley Retreat?

A. We do.

Q. How long have you owned the facility?

A. Since 2002.

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Q. And this is a place you offer as a spiritual center; is that correct?

A. Yes.

Q. Visitors can come to the center and -- as individuals or as groups?

A. Yes.

Q. Do you charge them for your services?

A. Yes.

Q. Now, you provide a number of spiritual services, do you not, at your retreat center?

A. We do.

Q. One activity that you provide is a sweat lodge; correct?

A. We provide retreats, and we used to. If a facilitator had desire to do a sweat lodge, yes. We would make that possible.

Q. Okay. In fact, that was one of the services that you offered to --

A. Yes.

Q. So you did offer those services, sweat lodge services, to people who come to your retreat center?

A. Yes.

Q. Now, James Ray didn't make you offer those services to the other people who were coming to

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enjoy your services, did he?

A. No.

Q. Now, you provided sweat lodge ceremonies since 2003 all the way up through 2009?

A. Yes, we did.

Q. And you charged for those sweat lodge services; correct?

A. We did.

Q. You charge for the lodging?

A. We do.

Q. You charge for meals?

A. We do.

Q. You charge for a facilitator if they ask you to provide a facilitator?

A. If they ask us to provide a facilitator, we do it. Yes.

Q. And that would be one of the services that you would offer to the people who come to the Angel Valley Retreat; correct?

A. Yes.

Q. Now, you met Mr. Ray in approximately 2003?

A. We did.

Q. And this was for a five-day retreat in which you provided lodging to the participants?

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A. In 2003, no. We did not provide the lodging.

Q. And you met him because he was looking at your facility and perhaps was going to use it for the Spiritual Warrior; correct?

A. But that was not the initial request. The initial request was to provide a place for a sweat lodge and a Vision Quest. And what would happen, next that was totally open.

Q. And you provided a place for a sweat lodge and a Vision Quest?

A. We did.

Q. Now, he didn't build the sweat lodge in the 2003 event, did he?

A. He did not.

Q. Now, after 2003 Mr. Ray came back and brought his group with him, did he not?

A. He did.

Q. And you charged -- you created a package for him in which he would provide lodging?

A. Yes.

Q. And meals?

A. Yes.

Q. And also the facilities for a sweat lodge, correct?

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A. Yes.

Q. Now, did you charge Mr. Ray for the sweat lodge?

A. Yes, we did.

Q. How much did you charge him?

A. The amount? Exact amount? I don't have that right off my head.

Q. How much did you charge per person for the lodging and meals?

A. That varied. That went up through -- became more through the years because James Ray's requests went up. So we charged him in 2009 more per person than in 2004.

Q. Okay. So you charged more in 2008 and 2009 than in 2004. How much did you charge?

A. I do not know. As I say, I do not have the exact amounts with me.

Q. Hundreds of dollars? Thousands? What was the amount?

A. In 2009 we charged for -- per participant for the six-day retreat an amount of \$1,600.

Q. Per participant?

A. Yes.

Q. I'm not horrible at math, but there were some 50-some-odd participants?

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A. You say you're good at math.

Q. You charged 1,600 per participant?

A. Yes, we did.

Q. I'd like to talk to you a little bit about the sweat lodges Angel Valley built for Mr. Ray in 2003, four and 2009 if we could. As I understand it, you hired a person to design the sweat lodge. Is that correct?

A. Yes.

Q. Every year?

A. Every time.

Q. Every time. Sorry. And Mr. Ray didn't hire that person; is that correct?

A. No. We did.

Q. Sorry?

A. We did.

Q. And you hired people to build the sweat lodges; correct?

A. We did.

Q. And it wasn't Mr. Ray who hired the people, was it?

A. We hired the people and we paid the people. And that was part of what James Ray compensated us for.

Q. Okay. And other groups as well?

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A. And other groups too. Yes.

Q. You hired people to assist in the ceremonies -- fire tenders for instance?

A. We did. If it was not -- if they were not part of our staff, we would hire people from outside.

Q. And it was not Mr. Ray?

A. That was not Mr. Ray.

Q. You provided the stones and the grandfathers, as it were, for the ceremonies?

A. Yes.

Q. You also provided the wood that would be used both in the sweat lodge and also -- first in the sweat lodge?

A. Yes.

Q. And those were the willows taken from the creek?

A. Yes.

Q. And you also provided the wood that be used to burn to heat up the rocks; is that correct?

A. Yes. Our staff would. Yes. Angel Valley would. Yes.

Q. So you would?

A. Well, yes.

Q. And it wasn't Mr. Ray who was providing

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any of that services, was it?

A. No.

Q. And he didn't tell you where to go get the willows from your own property, did he?

A. No.

Q. He didn't tell you where to get the rocks?

A. No.

Q. He didn't tell you where to get the wood to burn?

A. No.

Q. He didn't tell you where to get the tarps?

A. No.

Q. Now, if I understand your testimony correctly, that every sweat lodge that you ever used at Angel Valley was designed by and coordinated with a Native American who had expertise?

A. Uh-huh.

Q. That would include the sweat lodge built in 2008?

A. Yes.

Q. And that sweat lodge, the 2008 sweat lodge, was the same sweat lodge that was used in 2009, is that correct?

A. Yes.

Q. And for that sweat lodge -- I'll call it

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the "2008-2009 sweat lodge" -- you hired a Cherokee elder by the name of David Singing Bear; is that correct?

A. We did.

Q. That was the name you couldn't recall when Ms. Polk was asking --

A. No. When she as asking me, I could not recall the name of the person who built the sweat lodge in 2007.

Q. I see. I see. Okay.

A. The person in 2008 I could find it out. The person of 2008 that built in 2008, the same structure that was still up in 2009, that's David Singing Bear.

Q. My mistake. I misheard. So it's David Singing Bear who helped design and build the lodge for 2008-2009; correct?

A. He designed it and was supervising the actual construction of it.

Q. And David Singing Bear has built hundreds of lodges before he built the one in 2008?

A. Yes.

Q. And he has -- you hired him because he was an expert in building lodges?

A. Yes.

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Q. Mrs. Hamilton, I appreciate your cooperation with me. I have to be able to finish my question because the court reporter will have difficulties taking everything down. And I'm sorry if my questions are too long.

A. Okay.

Q. So Mr. Singing Bear or David Singing Bear in his hundreds of sweat lodges before, in the hundreds of sweat lodges he had done before, he had done small sweat lodges; correct?

A. He had.

Q. And he'd done very large sweat lodges; correct?

A. A few.

Q. Over a hundred?

A. He had.

Q. And it was okay with him, wasn't it, to do a sweat lodge with over a hundred people in it?

A. He preferred building smaller sweat lodges because that was more usual --

Q. I understand

A. -- and easier.

Q. I understand. But it was absolutely normal for him also to build lodges with over a hundred people, isn't that correct?

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A. You would have to ask him how normal that is.

Q. In fact -- we'll, get back to that. Other than Mr. Ray telling you how many people he needed for his ceremonies or how much room he needed for his ceremonies, Mr. Ray didn't have anything to do with the design of the sweat lodge, did he?

A. No.

Q. And, in your opinion, the 2008 and 2009 sweat lodge was constructed correctly; right?

A. It was.

Q. Now, Ted and Debby Mercer -- they worked for you in -- for the last three years?

A. Ted and Debby Mercer were volunteers in 2007, were on staff in 2008, were contracted for this particular -- to do the fire of this particular ceremony in 2009.

Q. And you also hired Ted and Debby Mercer to build the sweat lodge used by Mr. Ray in 2007; is that correct?

A. We did not. They were assisting just because they loved being part of it.

Q. Understood. Okay. But they helped build it, correct?

A. Yes.

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Q. Now, did Ted and Debby Mercer have any experience at all in building sweat lodges before 2007?

A. I don't think so. But they were not in charge. They were just helpers.

Q. You also hired Mr. Mercer to be what is called a "fire tender" in Mr. Ray's sweat lodge ceremonies in 2007, 2008 and 2009; is that correct?

A. Not in 2007.

Q. So he just volunteered in 2007?

A. In 2007 he was a helper both in construction and in the fire.

Q. Who was the fire tender in 2007?

A. I don't know the name.

Q. So Mr. Mercer just helped that person?

A. Yes.

Q. But he was the fire tender in 2008?

A. He was.

Q. And he was also the fire tender in 2009?

A. He was.

Q. And Miss Mercer, Debby Mercer, assisted Ted, Ted Mercer, as a fire tender all three times; is that correct?

A. In 2008 and 2009 they both did that together. In 2007 they both were just helping the

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person who was at that time in charge of the fire.

Q. So Miss Mercer was helping -- was also helping Mr. Mercer in his efforts in 2008?

A. They were helping each other.

Q. They were helping each other. That's perhaps a better way to put it. The fire tender is the person who tends the fire and heats up the stones; correct?

A. Yes.

Q. Now, these are the stones that go inside the sweat lodge?

A. Yes.

Q. And now, Mr. Mercer and Mrs. Mercer helped -- or Miss Mercer helped build the sweat lodge and tend the fire as part of their services to you at Angel Valley; is that correct?

A. It was a combination. If they would not have been on staff because they were -- they had a passion for it -- they would have been there as volunteer just as much.

Q. I guess what I'm asking is a little less about their motivation and more about who was in charge

A. Okay.

Q. They were working for Angel Valley; is

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that correct?

A. And our general manager gave them that task to do that, which they gladly wanted to take.

Q. But ultimately you own Angel Valley, so you're responsible for all the people working at Angel Valley; isn't that right?

A. The ultimate responsibility is there. Yes.

Q. So you hired them, asked them to help you and instructed them what to do; isn't that right?

A. I did not instruct them what to do. The general manager was directly working with them. And he -- it was his discretion to feel that they could do that.

Q. So if anything went wrong, it's his fault? Is that what you're telling us?

A. I'm not telling you it's anybody's fault. I think that's up to the Judge and the jury.

Q. All right. But what I'm getting at is you hired Mr. Palisch to be the general manager; correct?

A. Yes.

Q. And these other folks, the Mercers, were working for Angel Valley, correct?

A. Yes.

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Q. And you own Angel Valley; correct?

A. Yes.

Q. Now, they used whatever material -- this is now the Mercers. They used whatever materials to build the sweat lodges that you, Angel Valley, provided; correct?

A. I'm not sure what you mean by "whatever material."

Q. When the sweat lodge was built, there were certain materials; correct?

A. Yes.

Q. And Angel Valley provided those materials to the Mercers; correct?

A. I shared with you that the construction of the sweat lodge were willow branches that were found along the creek at Angel Valley.

Q. Right. And you were the folks, as in Angel Valley -- you were the people responsible for picking those particular branches?

A. Angel Valley is our property.

Q. And the wood that was used to burn in the fire -- that was provided by Mr. Hamilton and by you, correct?

A. That was found on the property.

Q. And it was provided by you and

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Mr. Hamilton; correct?

A. We are owners of the property, and the wood that was found on the property was used for the ceremony. Yes.

Q. So you provided it to them? I just want to make sure --

A. I hear you.

Q. Let's just -- can we -- you provided it to them, didn't you?

MS. POLK: Your Honor, objection. Argumentative.

THE COURT: Overruled.

You may answer that, ma'am.

Q. BY MR. LI: You provided the wood to the Mercers to use; correct?

A. What I'm saying is we are the owners of the property. The wood was found on the property. And in 2009 we provided the logs that were leftovers from the logs from the cabins that we have built.

Q. And you bought the logs to build the cabins, didn't you?

A. We did.

Q. Right. So they weren't found on the property. You had bought them, and they were sitting on the property because you bought them,

79

correct?

A. Uh-huh.

Q. And then you provided those logs to the Mercers to use in the fire; correct?

A. Yes.

Q. That's all I'm asking.

A. Okay.

Q. You also provided the plastic tarps that were used in the sweat lodges in 2008, 2009?

A. We provided all the coverings that were used from 2005 to -- all those years.

Q. Including the plastic tarps; correct?

A. Including the final covering that has been used from 2005 to 2009.

Q. Ma'am, I'm just asking you the plastic tarps. Did you provide the plastic tarps to the Mercers to build the sweat lodge?

A. We provided all the coverings, Mr. Li. Is that correct?

Q. Now, you also provided them with the stones?

A. Yes. Our landscapers found the stones along the creek.

Q. And Mr. Ray had nothing to do with choosing any of that material for use during the

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ceremony; correct?

A. He did not, other than he could check anything we had prepared for him.

Q. You have a lawsuit with Mr. Ray, right now, don't you?

A. We do.

Q. Now in 2008, Mr. Ray requested a sweat lodge that would hold approximately 75 people; correct?

A. He requested that in 2007 and repeated that request in 2008.

Q. Okay. You hired Mr. Singing Bear, David Singing Bear, and Ted Mercer to build the sweat lodge that would hold 75 people; is that correct?

A. Ted Mercer was only assisting.

Q. Okay. But you hired David Singing Bear to build that lodge; correct?

A. Yes.

Q. And a sweat lodge for 75 people was no big deal; is that correct? That's your opinion -- strike that.

Let me ask you this: Ma'am, you were interviewed by Detective Diskin shortly after the incident; isn't that correct?

A. I was.

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Q. And during that interview you told Detective Diskin --

MS. POLK: Your Honor, this is improper impeachment. You can't confront a witness with a prior statement if the witness is willing to admit it on the stand. And he hasn't established that she is not willing to testify to any testimony or any statements that were made during the interview of Detective Diskin.

1 THE COURT: Mr. Li, I don't believe there has
1 been anything that's inconsistent at this point.

1 Q BY MR. LI: A sweat lodge for 75 people
1 is, quote, unquote "no big deal"; is that correct?
1 Is that your opinion today?

1 A. A sweat lodge for 75 people is unusual. I
1 have shared earlier that we did not like that idea,
1 that we have tried to talk Mr. Ray out of doing it
1 for this amount of people. When he refused to
1 review that, we decided okay. Let's see whether we
2 can do that. It goes too far to say it's no big
2 deal because then you go into a personal opinion. I
2 think it is a big deal. I think you should not do
2 that.

2 Q Now, you currently say you think it is a
2 big deal to build a sweat lodge for more than 75

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people -- or for 75 people?

A. Structurally it is possible to do it safely.

Q. Ma'am, the question is yes or no. You are currently testifying that you think it's a big deal to build a sweat lodge for 75 people?

A. I think it is.

Q. Now, isn't it true that shortly after the incident you spoke to Detective Diskin and told him
1 that a sweat lodge for 75 people was no big deal?

1 A. What I'm saying there is that it is
1 possible to build a safe structure that can hold 75
1 people.

1 Q So the answer is yes, you did tell
1 Detective Diskin shortly after the incident that a
1 sweat lodge for 75 people was no big deal?

1 A. If that's what you read in my interview,
1 then that's what I said.

1 Q. Did you say that?

2 A. I guess you read it in the interview, so I
2 guess I did.

2 Q Now, you also have said that David Singing
2 Bear has built many sweat lodges that hold more than
2 a hundred people; correct?

2 MS. POLK: Your Honor, objection. The same

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objection to the use of prior statements until it's established there is inconsistent testimony today.

MR. LI: I'm not impeaching.

THE COURT: Mr. Li, I'm sorry?

MR. LI: I'm sorry. I'm not impeaching, Your Honor. I'm just asking her what she said.

THE COURT: We're under Rule 104. I think that's the third or fourth time I've said it.

You may continue.

1 Q. BY MR. LI: David Singing Bear has built
1 many sweat lodges that hold over a hundred people;
1 correct?

1 A. No.

1 Q He has built sweat lodges that hold over a
1 hundred people; correct?

1 A. Yes. To my knowledge. You would have to
1 ask him how many.

1 Q. So it's your opinion today that a sweat
1 lodge of 55 people is too big; correct?

2 A. My opinion today is that a sweat lodge
2 should be the normal size of 10, 15.

2 Q. Okay. And yet, I think you testified
2 earlier that Mr. Singing Bear had had sweat lodges
2 on your property of I think it was 50 at one
2 occasion and another sweat lodge of approximately

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20?

A. Yes.

Q. And David Singing Bear is the person you hire as the expert; correct?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. He is the person who you hire because of his knowledge about how sweat lodges should be
1 operated; correct?

1 A. Absolutely.

1 Q. And, in fact, he was the facilitator --
1 correct? -- during the sweat lodge with 50 people in
1 it; correct?

1 A. Yes.

1 Q. And he thought that was okay, didn't he?

1 A. Yes. Because it didn't depend on how you
1 perform that -- you adjust the method with which you
1 conduct that ceremony.

2 Q. So there is nothing about a 50-person
2 sweat lodge in and of itself that you have a problem
2 with?

2 A. It can be done safely.

2 Q Okay. So sweat lodges of 50 people can be
2 done safely; correct?

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A. Can be done safely. Yes.

Q. Now, if we could talk for a second about your interview with Detective Diskin on or about October 26, 2009. You recall that interview?

A. I do.

Q. Now, you had an attorney representing you at that time at that interview, did you not?

A. I did.

Q. And his name is Mark Zukowski; is that correct?

A. That's correct.

Q. And when you sat down with Detective Diskin during this interview, Detective Diskin told you that right away, right in the beginning, that you are not in any kind of trouble criminally? We're not investigating you or your husband; is that right?

A. If that's what you read, then that's correct.

Q. And, in fact, you knew that you were not under investigation by Detective Diskin when he interviewed you; right?

A. At that moment I did.

Q. And you knew no matter what you said, you wouldn't be criminally charged; correct?

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A. I don't know. I have not experience with criminal situations.

Q. Now, that same day on October 26, Fawn Foster also spoke to Detective Diskin -- detectives Diskin and Pollings; correct?

A. Yes.

Q. And Mr. Zukowski, who also was representing you and your husband and Angel Valley -- he was also present for that interview?

A. Yes.

Q. You provided her with a lawyer when they were -- when the detectives were going to talk to her; correct?

A. Yes.

Q. I mean, she didn't pay for that, did she?

A. No.

Q. You paid for that?

A. Yes.

Q. Now, she also had an agreement with the detectives that she wouldn't be prosecuted for anything she said; isn't that right?

MS. POLK: Judge, objection. No foundation. And, Judge, I also disagree to the use of the word "agreement."

MR. LI: I'm just asking questions, Your Honor.

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THE COURT: There is a good faith basis for it.

Mr. Li, go ahead and pose your question.

MR. LI: Thank you, Your Honor.

Q. Now, did you have a prior agreement with the state or with Detective Diskin in which you would talk to the detectives with your lawyer and -- did you have a prior agreement about that, that a lawyer would come?

A. That the lawyer would come? Yes.

Q. And did your lawyer talk to the state about the conditions under which you would speak to Detective Diskin?

A. Not that I remember.

Q. You don't remember one way or the other? Could I ask you if you have an agreement with the state about the fact that you won't be prosecuted if you have such an agreement? Excuse me. If you have such an agreement or if your lawyer has such an agreement, could I ask you to provide that to us?

A. I have no such agreement.

Q. If you do, please provide it to us.

A. I don't have such.

Q. Now, on that date in that interview with Detective Diskin, you told Detective Diskin that

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David Singing Bear had built hundreds of sweat lodges and had built lodges that hold more than a hundred people so 75 was not that big of a deal; isn't that correct?

MS. POLK: Counsel, could I have a page reference.

MR. LI: Nine at lines 4 through 7.

Q. Is that correct?

A. He said he could do it.

Q. But you said that he had built these sweat lodges that would hold more than a hundred -- that David Singing Bear had built lodges that would hold more than more than hundred people so 75 was not a that big of a deal; is that correct?

A. Yes.

Q. Now, I want to talk a bit about the lawsuits that you are currently facing. You've been sued by the families of the people who have passed away?

A. We are.

Q. You've also in that same lawsuit been sued by Steven Ray, Sidney Spencer, Sandra Andretti, Dennis Mehravar, Beverly Bond, Brandy Rainy Amstel and Sean Ronin; is that correct?

A. That's correct.

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MS. DO: May I approach, Your Honor?

THE COURT: Yes.

(Pause in proceedings.)

THE COURT: Mrs. Hamilton is indicating she needs to have her glasses.

You may do that, ma'am. Go ahead.

(Pause in proceedings.)

MS. DO: Your Honor, may I approach?

THE COURT: Yes, you may.

1 MS. DO: Consistent with this court's protocol,
1 premarked exhibits 1 through 59 and we are providing
1 the Court through the court clerk with a binder for
1 the bench.

1 THE COURT: Okay. Ms. Polk, have you seen them
1 all? Are there going to be objections?

1 MS. POLK: Your Honor, I have not seen them. I
1 don't know what they are. I'm not sure what they're
1 intending at the moment.

1 THE COURT: Okay.

2 MR. LI: Your Honor, let me just clarify.
2 Basically, we've provided a bench book so we can do
2 this in a quick fashion. We're not moving to admit
2 anything until Ms. Polk has been able to see it.
2 We're not asking to publish anything. We put them
2 all in the binder with tabs so the Court would have

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them and it will be more efficient.

THE COURT: Okay. We'll see what happens with each exhibit. Thank you.

Q. BY MR. LI: Now, we've been talking about a lawsuit with the folks who passed away in this case haven't we? Yes?

A. Yes.

Q. Okay. And in that lawsuit you filed an affidavit that you signed -- a five-page affidavit?

1 A. For?

1 Q. Did you file a five-page affidavit in the
1 lawsuit involving the victims or the folks who
1 passed away in this case?

1 A. I'm not completely aware what you're
1 referring to.

1 MS. POLK: Your Honor, could we have some
1 foundation. I'm not aware what lawsuit he's
1 referring to. Is there a court number specific --

1 MR. LI: Sure.

2 THE COURT: I'm going to suggest we break for
2 lunch right now. And I want to make sure Ms. Polk
2 can look through the exhibits. Because I'd like to
2 have the bench book here. I think that's the idea.
2 So I can keep up with the exhibits that are being
2 offered.

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So if you could do that, Ms. Polk, during the break. And also anything else, any other evidence that you anticipate offering, if Ms. Polk could see that.

MR. LI: We've handed her a red well with all of the exhibits that are contained in the bench book.

THE COURT: So why don't we -- excuse me -- resume, then, at 1:15, break now.

1 And, Mrs. Hamilton, I'll again remind you
1 of that rule of exclusion. You understand that?

1 THE WITNESS: Yes, I do.

1 THE COURT: Thank you. We'll be in recess.

1 (Recess)

1 THE COURT: The record will show the presence
1 of all the attorneys who I announced at the outset.
1 Mr. Ray has waived his appearance at this proceeding
1 Mrs. Hamilton is on the stand and has previously
1 been sworn.

2 Mr. Li?

2 MR. LI: Thank you, Your Honor.

2 Q. Mrs. Hamilton, where we left off, we were
2 talking about the size of the lodge, if you recall.
2 Now, you had previously told Detective Diskin, among
2 others, that a lodge built for 75 people was no big

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deal; correct?

A. A lodge built for 75 people can be done safely. And ceremony can be conducted safely inside that too, even though it's unusual size.

Q. But you had told Detective Diskin that it's no big deal; right?

A. You have read my papers.

Q. Would you like to hear the tape?

A. I'm fine. I will not deny that I said

1 it's going to be done safely. And then I say no big
1 deal, that that is what it implied.

1 Q. Okay. So you did say that it was no big
1 deal, that it was no big deal?

1 A. Yes.

1 Q. Thank you.

1 MR. LI: Now, Your Honor, if I may approach. I
1 apologize, Your Honor. I think the clerk has the
1 exhibit. It's Exhibit 79, but it's labeled No. 46
1 in your bench book.

2 (Pause in proceedings)

2 THE COURT: Feel free to retrieve the exhibits.

2 MR. LI: I'm approaching the witnesses with
2 Exhibit No. 79, tab 46. Now, this is a five-page
2 document entitled "Affidavit of Amayra Hamilton."

2 Q. Do you recognize this document,

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Miss Hamilton?

A. I do.

Q. This is in a lawsuit. If I -- I'll move it into evidence, Your Honor?

THE COURT: Any objection.

MS. POLK: Your Honor, I do object. This is -- I'm not sure. Is this a document offered to impeach the witness? If so, she hasn't made any statements that are inconsistent. I'm just not sure where we're going with this and under what grounds it would be admissible.

THE COURT: Mr. Li, we started out the hearing talking about going into certain events unnecessarily and proceeding with an offer of proof. So --

MR. LI: Yes, Your Honor.

THE COURT: Again, if you could focus this. What is your intention?

MR. LI: I will, Your Honor. There are two major points that are in this document. The first is that the defendant -- pardon me. That the witness has offered a different recitation of how the last -- the sweat lodges in 2003, four, five, six, seven and eight appeared. That appears in her affidavit, No. 1.

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And, No. 2, she has testified -- she's testified now that there are ways to conduct a sweat lodge safely with 75 people. But when we started off this conversation, she had testified for the prosecution that her husband and she were adamant that no sweat lodge could be conducted over the size of 45. And in this affidavit she avers something entirely different.

THE COURT: Overruled.

You may continue.

I'll admit 79 for purposes of this hearing.

(Exhibit 79 admitted.)

MS. POLK: Your Honor, I understand it's been overruled. But, for the record, I object to the mischaracterization of her prior testimony that she was adamant that no sweat lodge could be conducted safely with over 45 participants.

THE COURT: I think the witness has really explained what she meant by "no big deal." Several times now she's explained that talking about the structure.

And so if you're going to use this --

MR. LI: It will be quick, Your Honor. I promise.

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Q. Mrs. Hamilton, you are a defendant in a lawsuit brought by the various participants in the sweat lodge incident; is that correct?

A. That's correct.

Q. And they are seeking to recover from you money damages and other relief; is that correct?

A. That's correct.

Q. And you are defending yourself in that lawsuit; correct?

A. We are.

Q. And in that defense you have filed an affidavit with the Court in which you have, essentially, sworn to a set of facts; is that correct?

A. Yes.

Q. I'm going to ask you to look at page 3 -- Which I will, publish, Your Honor.

So here you say David Singing Bear is an expert in building sweat lodges in the American Indian tradition. In addition to the hundreds of lodges he has built of the usual size, he also has experience in building large ones, even some to accommodate over 100 people and many smaller ones.

Although the sweat lodge had the capacity to hold 75 people, the sweat lodge ceremony held on

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October 8, 2009, had a total of only 55 participants plus James Ray as the facilitator.

Did you -- when you signed this affidavit, did you mean that -- is that true?

A. That's true.

Q. Now, there is another paragraph here that says numerous sweat lodges ceremonies have been performed at Angel Valley's property in the past without mishap, including the 2008 Spiritual Warrior retreat. When you signed the affidavit, was that also true?

A. If mishap means that 911 was not called in -- other than the one in 2005, yes.

Q. Other than the one in 2005, in which 911 was called, from 2006, seven, eight, up to 2008, no mishaps had occurred?

A. As I say, if mishap means that 911 was not called, then that's true.

Q. What you mean by "mishap" is nothing bad happened at those sweat lodge ceremonies; isn't that correct?

A. As I say, if 911 is not called, if that is -- if the mishap is implied with calling 911, the need for calling 911, yes.

Q. Ma'am, I didn't write the affidavit and

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use the term "mishap." What did you mean by the term "mishap"?

A. Exactly what I say.

Q. That it doesn't involve calling 911?

A. Yeah.

Q. Now, let's talk about the prior sweat lodges. In 2003, if we can focus on 2003, isn't it correct that various participants complained that the sweat lodge was not hot enough?

1 A. That is incorrect. There was only one
1 person who complained about it. That was Mr. Ray.

1 Q. A woman named Martha Stem didn't complain
1 that it was too cold?

1 A. Not to me.

1 Q. Okay. But did somebody complain? Other
1 than Mr. Ray did other people complain that the
1 sweat lodge was too cool?

1 A. Not in my memory.

1 Q. Okay. Did you tell Detective Diskin that
2 Mr. Ray was right because if you have that size of a
2 lodge and you want to cover it in a way that keeps
2 the heat, it's not -- you know -- a small lodge --
2 did you tell him, Detective Diskin, that he was
2 right, that it was not hot enough?

2 A. That I understood why James Ray thought it

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might not be hot enough, because it's really difficult to get a sweat lodge of that size hot enough.

Q. So you understood that Mr. Ray might, in your words, be right because it's very difficult to get a sweat lodge that hot?

A. Yeah.

Q. And you don't know one way or another whether a woman named Martha Stem complained that it
1 was too cold in 2003?

1 A. Not in my memory that she complained that
1 to me.

1 Q. Did she not complain that to you? Is that
1 your testimony?

1 A. I do not remember ever talking with this
1 person about the temperature in the sweat lodge.
1 And if she does, that may be my failed memory.

1 Q. Now, earlier in your testimony today you
1 said the 2004 sweat lodge was also complained of not
2 being hot enough. And one of the reasons was
2 because it was built for 40 but there were only
2 approximately 12 participants?

2 A. Yes.

2 Q. So it was cooler?

2 A. Yes.

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Q. If we could focus on the 2006 sweat lodge, Miss Hamilton, in 2006 Mr. Ray held his five-day retreat at the Angel Valley?

A. Yes.

Q. As part of that retreat he contracted with you to have a sweat lodge?

A. Yes.

Q. Now, we'll get to 2006 in a second. But because of the events in 2005, you specifically
1 stayed around the lodge in 2006 to make sure
1 everything was correct?

1 A. Yes.

1 Q. And you saw all the participants coming
1 out of the lodge in 2006?

1 A. I did.

1 Q. And you were alert and there was no reason
1 why you couldn't perceive what was happen?

1 A. No. I saw what was happening, and what I
1 saw was not giving me discomfort.

2 Q. No one came out sick?

2 A. Not to the degree that was sick.

2 Q. No one came out vomiting?

2 A. No.

2 Q. No one passed out?

2 A. No.

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Q. Nobody, in your opinion, required medical attention?

A. No.

Q. Everything was fine in 2006; right?

A. Yes.

Q. And do you recall how many people there were in that ceremony?

A. I have my notes here. It was 43.

Q. 40. And those participants, those 43
1 participants, had also participated in the Vision
1 Quest before they went into the lodge?

1 A. Yes.

1 Q. And for the same amount of time?

1 A. Yes.

1 Q. Meaning 36 hours approximately?

1 A. Yes.

1 Q. Let's talk about the 2007 lodge. You were
1 also there when Mr. Ray held the retreat in Angel
1 Valley in 2007?

2 A. I was.

2 Q. And, again, you provided a sweat lodge for
2 Mr. Ray?

2 A. We did.

2 Q. And you were also there when the
2 participants came out of the sweat lodge?

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A. I was.

Q. And there were no problems with any of the participants in 2007?

A. Not that I was aware of.

Q. No one came out sick?

A. Not noticeable to my attention.

Q. No one came out vomiting?

A. I have not seen it.

Q. No one passed out?

1 A. I have not seen anybody pass out in 2007.

1 Q. And no one, in your opinion, required
1 medical attention; correct?

1 A. Not to my awareness.

1 Q. And these participants in the 2007 sweat
1 lodge -- they also went on a Vision Quest before the
1 sweat lodge; correct?

1 A. They did.

1 Q. Now, in the -- in your statement, you're
1 affidavit, you say that no mishaps took place at any
2 of the numerous sweat lodges. And I'll accept that
2 you exempt from that 2005. No mishaps occurred at
2 any of the sweat lodges including James Ray's 2008
2 spiritual retreat; correct?

2 A. What I'm stating in there is what was in
2 my awareness. I'm not testifying on what happened

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in 2008.

Q. It doesn't say that my perception is that no mishaps took place including the 2008 Spiritual Warrior Retreat, does it?

A. It is the affidavit that I signed. So I testified what I witnessed.

Q. Right. And you did not --

A. And what I was aware of.

Q. And you did not witness any mishap at the
1 2008 Spiritual Warrior Retreat?

1 A. I did not witness it, and I was not aware
1 of it. That does not include -- that does not imply
1 that they were not there.

1 Q. So you have no firsthand knowledge one way
1 or another about what happened in the 2008 sweat
1 lodge?

1 A. I do not.

1 Q. Nevertheless, you testified or you filed
1 an affidavit with the Court in which you say that no
2 mishap took place --

2 A. I filed --

2 Q. Sorry, ma'am. If I may finish?

2 A. Yes.

2 Q. You filed an affidavit in an Arizona court
2 saying that no mishap had taken place including the

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James Ray 2008 Spiritual Warrior Retreat?

A. I was in that affidavit stating what I believe was statement what my truth of what I had witnessed.

Q. But you're just telling us now you had have no idea what happened in 2008?

A. Did not witness it. I was not present at the spot.

Q. So is this affidavit false?

1 A. Nothing false with the affidavit. There
1 is other witnesses. And I cannot testify other
1 witnesses.

1 Q. Now, you were interviewed by
1 Detective Diskin on October 26 when your lawyer was
1 present and Detective Diskin and Pollings asked you
1 if someone was, and I'm using their words, down for
1 the count unconscious. Do you remember that about
1 the 2008 sweat lodge?

1 A. Uh-huh.

2 Q. And your answer was you didn't know of
2 anything like that happening; correct?

2 A. My answer was that I didn't know.

2 Q. Now, after the 2008 sweat lodge, almost a
2 year later you spoke to the Mercers -- correct? --
2 about the 2008 sweat lodge?

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A. After is a long concept. I do not know what you mean by after when.

Q. Let me rephrase the question. Debby Mercer and Ted Mercer told you that people were not feeling well after the 2008 sweat lodge; correct?

A. They did not.

Q. They never told you that?

A. They never told me that.

Q. Let's talk about 2005. Actually, strike
1 that.

1 You've testified about the 2009 incident,
1 and you were there at the end of sweat lodge;
1 correct?

1 A. I was.

1 Q. And you saw the problems people were
1 having as they came out of the sweat lodge?

1 A. I did.

1 Q. And people were in bad shape?

1 A. They were.

2 Q. Now -- and you tried to help people?

2 A. I did.

2 Q. Now, after the -- after emergency
2 personnel had arrived, you eventually brought people
2 into the Crystal Room in the Angel Valley -- the
2 Crystal Room, the large hall at Angel Valley?

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A. After they went to their own rooms to shower and things, we asked them to come to the dining room.

Q. And that's the crystal --

A. No.

Q. I'm sorry. The dining room. You were trying to be -- at that point were you trying to help all of the folks who had gone through this?

A. Yes.

1 Q. And at that point a number of detectives
1 came and talked to you? Do you remember that?

1 A. Yes.

1 Q. In fact, Sergeant Winslow spoke to you?

1 A. Yeah.

1 Q. And he asked you about what happened in
1 the 2009 sweat lodge?

1 A. Yes.

1 Q. And he asked you if there had ever been
1 any problems with Mr. Ray's sweat lodges before that
2 evening. Do you remember that?

2 A. Yes.

2 Q. And you told him that you had, quote,
2 "... had event from James Ray at the retreat in
2 past years and had not had a problem of this type
2 before " Do you recall that?

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A. I may have said that. Yeah. I would rephrase that today. I would rephrase that that in 2005 there was an incident.

Q. I understand. But your first statement to law enforcement on October 8, the night of the incident, was there had never been a problem before the 2009 sweat lodge like the problem that took place in 2009?

MS. POLK: Counsel --

1 THE WITNESS: That's totally correct.

1 MS. POLK: Do you have a reference to --

1 MR. LI: Yes. Sergeant Winslow's report, which
1 Ms. Do can give you the Bates number.

1 MS. POLK: It's in his report and not in a
1 transcript?

1 MR. LI: Your Honor, should I address the Court
1 or should I address --

1 THE COURT: Let's find out what we're use for
1 impeachment, Mr. Li.

2 What document do you have?

2 MR. LI: It's a police report that reflects
2 what the witness said. And I just asked her about
2 it, and she said she said it.

2 THE COURT: And Ms. Polk is entitled to see the
2 document. The witness is not necessarily at the

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time of testifying. But Ms. Polk is entitled see a document that is being used for impeachment. So --

MR. LI: I have not presented a document.

THE COURT: You don't have to to the witness while testifying. But opposing counsel can see it.

MR. LI: We can get the page number. But I'm moving on anyway.

MS. POLK: Additionally, Judge, if I may be heard. Proper impeachment is confronting a witness with a statement that she has made. It's not proper to impeach a witness with a report written by a police officer that summarizes a statement.

1 You can bring in that police officer, but
1 to read a police report confronting a third party
1 with what is written in the police report is not
1 proper.

1 THE COURT: Mr. Li, that is the normal
1 procedure. If there is a statement that's made --
1 if it's not consistent with what has been documented
2 before or there is sometimes some other form of
2 extrinsic evidence, then it can be brought out at
2 that point.

2 But -- so anyway, yes. Until I know the
2 statement that's been made that's going to be
2 possibly contradicted, that's the sequence of

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impeachment --

MR. LI: Okay.

THE COURT: -- in my view. Thank you.

Q. BY MR. LI: Now, let's focus on Mr. Pfankuch in 2005. When you say there was a problem in the 2005 sweat lodge, you're really talking about Mr. Pfankuch; correct?

A. I am. I am.

Q. You're not talking about all the other
1 sweat lodges and all the other participants who were
1 there?

1 A. No.

1 Q. Now, you saw Mr. Pfankuch when he came out
1 of the sweat lodge in 2005?

1 A. I did not see him come out because it was
1 dark and there were 40 people coming out.

1 Q. Okay. And I'll rephrase it. You saw him
1 after he had come out of the 2005 sweat lodge?

1 A. I did.

2 Q. And, to your knowledge, he stayed in the
2 sweat lodge until the end?

2 A. That is my understanding.

2 Q. And when he came out of the lodge, he came
2 out under his own power?

2 A. I have not seen him come out of the sweat

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lodge. I only saw him afterwards among the people.

Q. Okay. Your understanding -- what you saw afterwards was that he was -- his body was moving and he was able to physically function; correct?

A. Yes. In an incoherent way. Yes.

Q. And he was -- he had quote, unquote, "lost it"?

A. Yeah. That's a good way of putting it.

Q. He was -- before I get to Dan Pfankuch, for a second, if I could, you had mentioned how people had come out of the lodge in a sort of a tumble?

A. A little bit. Yes.

Q. And, essentially, all of them were trying to come out at once?

A. From the outside looking in, that looked like it.

Q. So instead of coming out one at a time, they were all rushing for the door at the same time?

A. That was the impression I had.

Q. And it was a bit chaotic?

A. That was chaotic.

Q. And in the midst of that Mr. Pfankuch is -- you didn't see him come out, but he's out and he's acting wild; correct?

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A. Yes. But again, I did not see him come out of the sweat lodge.

Q. I understand. And is he kicking and throwing punches?

A. Yeah.

Q. And he's a big man, isn't he?

A. He's a big, tall man.

Q. And he's sort of doing martial arts type of moves?

A. I would not describe it as martial arts.

Q. Okay. But he was kicking and hitting and those sorts of things?

A. He was waving his arms around him. And he may have even touched people. Yes.

Q. Okay. And some other participants grabbed him and tried to prevent him from harming other people?

A. Yes.

Q. And there was a relatively large struggle with Mr. Pfankuch to sort of keep him from lashing out?

A. He was a strong man. And it was not so much that people tried to avoid him to hit other people. It was more to help him calm down.

Q. To help him calm down. But it took a

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number of people to control him?

A. It did.

Q. And he's a large man with a lot of physical power?

A. Yes.

Q. And once the various participants had gotten a hold of Mr. Pfankuch and brought him to the ground, that's when he was -- that's how Mr. Pfankuch ended up on the ground; is that correct?

A. I do not know that because when I was leaving -- when I left the scene to go to James Ray and call 911, he was still up. And when I came back, he was on the ground.

Q. Okay. And while he was up -- now, I'm going to preface this by saying I understand there are spiritual dimensions to this. But I just want to focus on physical. In terms of the physical, Mr. Pfankuch's physical condition, he was not unconscious in the sense that his eyes weren't closed and he wasn't lying on the ground? He was actually physically able to move; correct?

A. He was physically able to move. But it depends on what is the definition of being "unconscious." For me it was unconscious. But if

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the definition of "unconscious" means no movements, no nothing, no. He was moving.

Q. Okay. Now, have you described his condition as having had an out-of-body experience?

A. I have.

Q. And is that how you would characterize it today?

A. I would characterize that today.

Q. And he was totally somewhere else?

A. He was.

Q. And, essentially, your issue was that -- do you believe that Mr. Pfankuch's spirit was leaving him and that he was getting lost?

A. If you are open to describe that beyond the strictly physical, that is how I saw it happen. His spirit was not connected with his body.

Q. And that he was getting lost?

A. That is what then happens.

Q. And he could not find his way back to his body?

A. Yeah. And that can require guidance. It can happen by itself. It happens in similar situation when people are feverish or when people are on drugs. They can find it by themselves or they need help or they cannot find it back, and then

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they die.

Q. And your diagnosis of Mr. Pfankuch relates to his spiritual condition, that he was not -- that his physical self, his spirit, was not with his physical body and was getting lost?

A. My concern was if that is the case and the spirit cannot come back in the body, then he might have died.

Q. Right. I understand that. But before the
1 might have died part, your main concern with
1 Mr. Pfankuch was not a medical diagnosis per se. It
1 was more concerned with his spiritual condition?

A. If the spiritual condition affects the
1 physical condition, then it becomes both.

Q. And the main spiritual issue was that his
1 spirit was unconnected to his body and was getting
1 lost?

A. That was my observation.

Q. Now, you offer a number of services at
2 Angel Valley, do you not?

A. I do.

Q. Including some spiritual services? Is
2 that not correct?

A. We do.

Q. For example, you offer something called

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"channeled writing"?

A. I do.

Q. What is channeled writing?

A. It's connecting with realities that are
not exactly of the physical.

Q. Receiving messages from spirits or the
dead or beyond?

A. Yeah.

Q. And then you channel those and you write
1 them down for people; is that correct?

A. And any person can do that.

Q. And do you charge for that?

A. For services I offer I charge. Yes.

Q. Do you -- now, with respect to the other
1 dimensions, these are people in the afterlife?

A. Could be.

Q. And they are also spirits amongst us?

A. Could be. Some call them angels. Some
1 call them different beings.

Q. Angels, different beings. Are there other
2 entities that you can communicate with through
2 channeled writing?

A. It is -- in theory it's possible to
2 connect with any kind of reality that is anywhere.
2 Can we all do that? Potentially yes. Do we all do

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that? We do but not on an aware level always.

Q. And when you say any realities anywhere,
you mean alternate universes and things like that?

A. You name it.

Q. And was Daniel Pfankuch perhaps in one of
these alternate places at the time when he came out
of the sweat lodge in 2005?

A. Wherever he was, he was not here.

Q. Do you think he might have been in one of
1 other those other places?

A. He was somewhere out there. And I'm not
1 the one who can know where he was.

Q. Now, another service you provide is called
1 "healing with crystals" and "crystal skulls";
1 correct?

A. Yes.

Q. And this is a practice where you use
1 crystal skulls to enhance your psychic ability; is
1 that correct?

A. That is.

Q. And you also use the crystal skulls to aid
2 you in channeling messages or information from other
2 dimensions; correct?

A. Yes.

Q. And you also charge for those services; is

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that right?

A. Any service is part of my livelihood.
Yes.

Q. Now, when Mr. Pfankuch was standing and
waiving his body around but his spirit was somewhere
else, that's when you decided to call 911; correct?

A. Yes.

Q. Because you didn't know -- pardon me.
Because you didn't know what to do with someone in
1 that particular condition?

A. No. That was something I had not
1 experienced before and I felt was beyond my capacity
1 to deal with it by myself.

Q. And Mr. Pfankuch, however, was conscious
1 in that he could speak when the paramedics actually
1 came; correct?

A. When they came, he still was not connected
1 with our world here.

Q. But shortly thereafter he spoke to the
2 paramedics, did he not?

A. Once -- shortly after when they had
2 carried him into the ambulance, he came to.

Q. His body reconnected with his spirit?

A. That's how I would phrase it. Yes.

Q. And at that point he spoke to the

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paramedics, did he not?

A. He did.

Q. And he told the paramedics that he was fine and that he didn't need to go to the hospital?

A. Yes.

Q. And, in fact, you spoke to Mr. Pfankuch the very next morning; correct?

A. I did.

Q. And he told you that he had had a quote,

1 unquote, "great experience"?

1 A. He did. That were his words.

1 Q. Now, other than Mr. Pfankuch's spirit

1 leaving him, you didn't see any problems with

1 Mr. Pfankuch like throwing up?

1 A. I did not.

1 Q. You didn't see him having problems with breathing?

1 A. He was very irregular in his breathing.

1 But, again, I'm not a medical person. It was in the dark. His total condition for me was concerning.

2 Q. You didn't see him physically

2 incapacitated, did you?

2 A. No.

2 Q. He was, in fact, quite strong in fighting

2 with other -- not fighting but struggling with other

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participants?

A. His physical seemed not to be impacted.

Q. Just a few other questions about 2005. I think your testimony on direct with the state was that there were people who were outside that you were helping who were shivering in cold?

A. Yes.

Q. And you gave them blankets?

A. Yes.

1 Q. Now, when the paramedics came to get

1 Mr. Pfankuch, they only -- they arrived at the scene of the sweat lodge; correct?

1 A. They did.

1 Q. And were there other people who had

1 participated in the 2005 sweat lodge also there?

1 A. There were still a lot of people around

1 there that had not left to their cabins yet.

1 Q. And the paramedics could have seen all the people who were there; correct?

2 A. They did.

2 Q. And they didn't take any of the other people to the hospital, did they?

2 A. They did not.

2 Q. And the next day Mr. Ray apologized for the incident?

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A. He did.

Q. And he also apologized for yelling at you?

A. He did.

Q. Now, after the incident with Mr. Pfankuch, JRI, James Ray International, conducted a number of other sweat lodges at your facility; correct?

A. Yes.

Q. And they changed a lot of the procedures, didn't they?

1 A. They changed some procedures. Yes.

1 Q. They shortened the length of the Vision

1 Quest in 2006? I think you testified to that --

1 A. They did not.

1 Q. When did they change the length?

1 A. The Vision Quest has always been the same length.

1 Q. The same length?

1 A. And I stated that before.

1 Q. I'm sorry. Then I misheard. They asked for -- from you for more fruit and drinks?

2 A. More. We already brought things out in 2005.

2 Q. I understand. I'm just asking whether they asked for more.

2 A. Yes.

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Q. They stationed volunteers outside of the sweat lodge?

A. Yes.

Q. They stationed volunteers inside of the sweat lodge?

A. In 2006 was the first year he brought, I think, two volunteers.

Q. Stationed inside the sweat lodge? They changed the policy so everybody had to leave in the same direction?

1 A. I don't know because I never was inside the sweat lodge. I do not know what measures were taken inside the lodge.

1 Q. Let me ask you this. In 2006 I think you testified earlier when people were leaving, they were leaving one at a time?

1 A. They came out more organized.

1 Q. And it wasn't a mad rush for the door?

1 A. Yes.

2 Q. They changed the sweat lodge ceremony from the evening where you couldn't see anybody when they came out to the daytime; correct?

2 A. Yes, they did.

2 Q. They added some tarps on the ground?

2 A. That was not in 2006. That was probably

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2008.

Q. And then electrolytes were added at some point?

A. Yes.

Q. When was that?

A. I would not be able to state it exactly.

The drinks and the fruit that was provided in 2006 was more elaborate than in 2005. And I think every year it was kind of a step up.

1 Q. Every year it became more elaborate? More
1 fruit? More drinks?

1 A. Uh-huh.

1 Q. Now, there were hoses outside to help cool
1 people down?

1 A. Yes. They did that in 2009. And I did
1 not know what was the first year that they did
1 that. They may have done that in 2008, but I'm not
1 sure.

1 Q. I think they did in 2008. And in 2009
2 they had a registered nurse who was a volunteer on
2 the outside?

2 A. I heard later.

2 Q. And they also had a staff trained in CPR?

2 A. I didn't know about that, but I heard that
2 later.

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Q. Now, you had told us earlier today about a number of other sweat lodge ceremonies with other groups at your facilities?

A. Yes.

Q. Now, did any of those groups have a registered nurse stationed outside?

A. Never.

Q. Did any of those other groups have CPR trained staff?

1 A. Never.

1 Q. Did any of those other groups have
1 volunteers inside the lodge?

1 A. Not that I was aware of.

1 Q. Did any of those groups have volunteers on
1 the outside of the lodge?

1 A. Not that I was aware of. No. And there
1 never was a need for that.

1 MR. LI: Move to strike, Your Honor.

1 THE COURT: Sustained.

2 Q. BY MR. LI. Now, in 2009, if we could
2 focus for a second on the incident in 2009.
2 Miss Neuman, Liz Neuman -- she did not go on the
2 Vision Quest; correct?

2 A. She did not.

2 Q. And you didn't see everything that

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happened in the sweat lodge ceremony; correct?

A. Inside the sweat lodge ceremony I didn't see anything.

Q. Okay. You didn't see anything involving the sweat lodge ceremony until the sixth round; is that correct?

A. The only thing I could see was what happened outside of the sweat lodge, not inside.

Q. I apologize. Let me be more clear.

1 Outside of the sweat lodge ceremony you didn't see
1 anything until the later parts of the sweat lodge?

1 A. Yeah.

1 Q. And it was the same lodge from earlier,
1 from 2008?

1 A. Same lodge.

1 Q. Now, Miss Bevins you testified, I believe,
1 in connection with Ms. Polk's question about what
1 was similar between 2005 and 2007, and you said
1 Miss Bevins was similar to Mr. Pfankuch; correct?

2 A. Yes.

2 Q. And -- but Miss Bevins -- going back to
2 Mr. Pfankuch for a second, he was awake but he
2 couldn't speak to anybody; right?

2 A. He did speak but incoherent. And he did
2 not hear us.

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Q. Okay. Now, Miss Bevins, however, was talking to people?

A. She did not hear us either.

Q. She was calling for Mr. Ray?

A. Yes, she was.

Q. And she was talking to the other people around her; correct?

A. But the people said things back to her that she did not hear.

1 Q. Do you think that she was also suffering
1 from a spiritual disconnection with her body?

1 A. What I observed was a similar problem.

1 Q. And my question to you is do you think
1 that she was experiencing a spiritual disconnection
1 from her body?

1 A. That's what I thought.

1 Q. Similar to Mr. Pfankuch --

1 A. Similar to Mr. Pfankuch. Yes --

1 Q. -- in 2005?

2 A. Yes.

2 MR. LI: Your Honor, I'm going to grab another
2 exhibit, Exhibit 80 and 47 in Your Honor's binder
2 book.

2 May I approach the witness, Your Honor?

2 THE COURT: You may. Yes.

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Q. BY MR. LI: I'm placing before you -- or I placed before you an 11-page document which is a lawsuit in which the Angel Valley Ministries, Angel Valley Spiritual Retreat Center, LLC, has sued James Ray, Jane Doe Ray, James Ray International and a number of other entities.

Are you familiar with this document?

A. I'm familiar with the document.

Q. This is a complaint that you filed against

1 Mr. Ray, correct?

1 A. It is.

1 MR. LI: Your Honor, I'd move it into
1 evidence.

1 THE COURT: What's the number?

1 MR. LI: It is Exhibit 80, No. 47 in your
1 binder.

1 THE COURT: Okay.

1 MR. LI: Sorry for the double numbers.

1 THE COURT: Ms. Polk?

2 MS. POLK: I would request first that the
2 witness be allowed to see the exhibit to confirm
2 that it is, in fact, what she's been asked about.

2 THE COURT: She certainly can do that.

2 THE WITNESS: Yes. I'm aware of this.

2 MS. POLK: Judge, may I briefly voir dire the

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witness?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MS. POLK:

Q. Mrs. Hamilton, is this the complaint that was filed by Angel Valley, to the best of your knowledge today?

A. Yes.

Q. Is there more to the lawsuit than what is
1 in front of you?

1 A. I was not prepared to talk about that
1 lawsuit. I thought that was a civil case that was
1 completely unrelated to what we are doing today
1 here. But --

1 Q. Have more pleadings been filed in that
1 lawsuit?

1 A. No.

1 Q. In other words, was an answer filed by JRI
1 or James Ray?

2 A. It's very recent. And there is -- I think
2 the answer that has been recently filed was to
2 dismiss it. That is the first reply that has come
2 from --

2 Q. From James Ray or JRI?

2 A. Yes.

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Q. And are you represented by an attorney in this matter?

A. Yes.

Q. Is it the attorney who has prepared this paperwork?

A. Yes.

Q. And the document that's in front of you -- did you sign?

A. No. You see it is signed by the attorney.

1 Q. And when you say you were not prepared to
1 talk about this today, are you uncomfortable talking
1 about it?

1 A. Yes. Because this is a situation that I
1 feel is playing between attorneys, between Mr. Li
1 and our attorney. And I am not aware that I was
1 going to testify anything that has to do with that
1 situation. I thought I was here as -- to be heard
1 as a witness in the criminal case against Mr. Ray.

1 MS. POLK: Your Honor, I object to this
2 document. First of all, it's not a document signed
2 by Mrs. Hamilton. It is filed by an attorney on
2 behalf of Angel Valley Ministries, the nonprofit
2 corporation. She has indicated she has not signed
2 it.

2 Furthermore, she is represented by an

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attorney in that matter and has expressed discomfort with going ahead. The state was not given any notice that these would be exhibits at this hearing. And additionally I would object to relevance.

THE COURT: Mr. Li, other than possible relevance to bias, motive, that type of thing, any other relevance?

MR. LI: That's the relevance, Your Honor.

1 Listen. I'm just going to ask a number of questions
1 about the complaint, the actual complaint itself.
1 The fact is that she owns Angel Valley and she's a
1 defendant in a lawsuit and has filed affidavits on
1 behalf of her and her entities. And she's suing on
1 behalf of her and her entities Mr. Ray. And these
1 are relevant points to influence her testimony.
1 This is particularly so since her original
1 statements are different from the statements today.

1 THE COURT: Ms. Polk?

2 MS. POLK: First of all, I object to the
2 mischaracterization or the argument. I don't agree
2 that her statements are different from her original
2 statements, different from the statements today.

2 But secondly, the state will stipulate
2 that Angel Valley Ministries, the nonprofit

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corporation, and Angel Valley Spiritual Retreat Center, an Arizona limited liability company, has filed a lawsuit against James Ray and JRI. We will stipulate to that.

But I think she is represented by an attorney in that matter. It's a matter that appears to be pending. She's not comfortable testifying about it. If the defense would accept the stipulation that, in fact, there has been a lawsuit filed by the nonprofit and the limited liability, then we can move on.

MR. LI: Your Honor, I have about seven questions for her about this. We did not call her as a witness. The state called her as a witness. And any suggestion that the fact that she is represented by a lawyer really, in my humble opinion, that issue lies with the state.

They called the witness who has ongoing litigation. I don't know whether they've alerted her counsel.

And, Your Honor, if we could handle one question at a time, I think you will see that they're not invasive into the attorney-client relationship. I wouldn't do that.

THE COURT: I'm aware there is a complaint, and

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it's been referenced -- the lawsuit has been referenced now several times.

MR. LI: There is two different lawsuits. And that's the point I'm making. One lawsuit in which Mrs. Hamilton is a defendant and having been sued by various of the participants and decedents -- the estates of the decedents at the sweat lodge.

This is a lawsuit brought by her entities against Mr. Ray. And I think it's highly relevant to judging her testimony in which she has said a number of relatively disparaging things about Mr. Ray. And I think that we should identify the fact that her entities have filed a lawsuit and they are seeking monetary damages. And I think this is highly relevant to her credibility.

THE COURT: You can ask some questions about a lawsuit being filed. And we will just proceed question by question.

MR. LI: It will be very brief.

THE COURT: Ms. Polk, so you will have an opportunity to object as the question is presented. I really think I understand the -- I do understand the point you're making. Really both lawsuits raise several concerns.

MR. LI: I'll cut it to three questions.

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THE COURT: The last one. And if there is an objection.

CROSS-EXAMINATION (Continued)

BY MR. LI:

Q. In this lawsuit --

Thank you, Your Honor.

In this lawsuit, Mrs. Hamilton, you've sued for breach of contract indemnity, tort of intentional exposure in civil litigation, intentional interference with contractual relations, intention interference with business relationships; is that correct?

THE COURT: One thing I'll say. I have a rule admitting the complaint. The complaint is relevant and -- well, I don't know if we need to go further than that.

Ms. Polk?

MS. POLK: Judge, again, the state will stipulate that the lawsuit has been filed. We will stipulate that she seeks monetary damage. But to confront her with legal terms, a document written by her attorney, not signed by her, I think is improper and not necessary.

We will stipulate that the lawsuit's been filed by the two -- the nonprofit and the limited

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liability. She has not filed these lawsuit in her personal capacity. And we will stipulate that the lawsuits do seek monetary damage.

MR. LI: I'm --

THE COURT: I'm going to admit Exhibit 80. It's going to be admitted.

Mr. Li, I'm having trouble understanding why you would need to inquire about the specific legal terms.

MR. LI: That's all right. I'll move on from that one. I'll focus on two questions.

Q. One, in this complaint you accuse Mr. Ray of acting with a quote, unquote, "evil mind"?

MS. POLK: Judge, same objection. Language.

MR. LI: That's not a legal term. I'm sorry. I apologize.

THE COURT: Go ahead, Ms. Polk.

MS. POLK: It's pulling language out of -- I'm not even sure what paragraph it's referring to.

MR. LI: 21.

MS. POLK: Again, pulling language written by the attorney in the context of the initial complaint filed in a civil lawsuit, again, on behalf of two legal entities -- the nonprofit and the limited liability -- and not filed in her personal

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capacity.

And, again, in light of the state's stipulation, in light of this document having been admitted by the Court, I think that the point has been made and we should move on instead of trying to confront her about specific language written by an attorney.

THE COURT: There is a claim for punitive damages. So the lawyers here know why that's there. Mr. Li, questions can be asked that might show whether there is motive or bias. But to go through the complaint and do that --

MR. LI: I won't. I'll ask one last question.

Q Mrs Hamilton, you're asking for monetary damages, punitive damages, and attorneys' fees in this lawsuit; correct?

A. You've read the lawsuit. I am not --

Q I'm just asking.

A. I cannot talk about this. This lawsuit is put in attorneys' language, not my language.

Q Sorry Are you asking for money?

A. You and Mr. Ledbetter are talking about this lawsuit.

Q. Here's my question

A. And I'm not talking about this.

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Q. Ma'am, are you asking for money? Are you suing James Ray for money?

A. Have you read the lawsuit?

Q. I'm asking you the question.

A. I'm not going to answer the question.

Sorry.

MS. POLK: Your Honor, can I be heard on one point?

THE COURT: Yes.

MS. POLK: I'm not sure who represents the --

Can I voir dire the witness?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MS. POLK:

Q. Do you know who represents James Ray in this civil lawsuit?

A. It's here on the top.

Q Those are the attorneys that represent you.

A. Okay.

Q Do you know if Mr. Li represents --

MR. LI: I'll represent we don't.

THE WITNESS: No. It is against the insurance company. And they are represented by -- I don't have the name here right now. I can get you the

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name.

MS. POLK: Judge, again, I request that we move on.

THE COURT: The complaint has been admitted, and it will be considered.

There isn't any further relevance that I see for purposes of this hearing, Mr. Li.

MR. LI: Okay, Your Honor. That's fine.

CROSS-EXAMINATION (Continued)

BY MR. LI:

Q. Now, Miss Hamilton, after the police came to Angel Valley after the incident, they collected a bunch of evidence; is that correct?

A. They did.

Q. They took samples from the tarps, maybe one foot by one foot samples?

A. I have not seen what pieces they cut. They sampled everything they could.

Q. They sampled some of the dirt?

A. Anything they could think of could be of any --

Q Did you see them?

A. I saw them walk away with bags full of material.

Q. So you don't know whether or not they

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sampled anything they could -- all you know is what you saw; correct?

A. All I know is what I saw.

Q. So what you saw is they sampled -- they carried away some bags; correct?

A. Big bags.

Q. And they took some logs; correct?

A. Yes.

Q. And then after that, you decided that you wanted to have a cleansing ceremony?

A. Yes.

Q And in that cleansing ceremony you decided that you wanted to burn the remaining wood; correct?

A. No.

Q Burn the remainders of the sweat lodge?

A. Of the sweat lodge, yes.

Q. And then take away all the other materials that were associated with the 2009 sweat lodge?

A. Yes.

Q. Including the rocks?

A. No.

Q Where did the rocks go?

A. Are still there.

Q. Are all of the rocks --

A. All of them.

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Q. Where did the wood go?

A. The wood -- that was burned.

Q. The remaining wood. There were wood piles.

A. The wood piles. The wood that was used for the fire?

Q. Correct.

A. Was still there.

Q. Okay. And then you raked the ground; correct?

A. Yes. We raked the ground.

Q. And you created a new space there with a crystal -- or some crystals in the center?

A. We did.

Q. And before you raked the ground and burned the pieces of the sweat lodge and did the other things you did, did you have a conversation with Detective Diskin?

A. We did.

Q. And did you tell him that you were going to, essentially, destroy a lot of these objects?

A. No. I was not telling him that I was going to destroy --

Q. That you were going to burn some of the -- that you were going to have a cleansing ceremony?

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Did you tell the detective --

A. We said we were going to take the sweat lodge down to make sure that everything that they needed for their investigation, that they had everything they needed. And they said yes. The place is yours. And then we said tomorrow we will do -- that was on Friday night. And then we said tomorrow we will do a ceremony in which we will take the sweat lodge down in the ceremonial way with prayers, the way, in our understanding, it is done traditionally. And we did that together with a number of the participants who were still on the property. That's what happened.

Q. And you did that with Detective Diskin's permission?

A. Yes, we did.

MR. LI: If I may have a moment, Your Honor?

THE COURT: Yes.

MR. LI: I have nothing further, Your Honor.

THE COURT: Thank you, Mr. Li.

Ms. Polk?

MS. POLK: Thank you, Judge.

REDIRECT EXAMINATION

BY MS. POLK:

Q. Just a few questions, Miss Hamilton. You

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were asked questions about who was responsible for the willow branches, the logs, the stones, the wood from the property. And you provided us with some answers. Can you talk about -- is there a distinction in your mind between who is responsible for the construction of the sweat lodge and the ceremony itself?

MR. LI: Objection. Relevance.

THE COURT: Overruled.

Q. BY MS. POLK: That means you can answer.

THE COURT: You may answer.

THE WITNESS: Yes. I see there is a distinct difference. Providing the material in a way that is safe to be used and set up in a proper way and ready to be used is one thing. And then it is up to the person who does the ceremony whether a ceremony is done safely, not to say right.

If I buy a new car and it can drive 150 miles an hour, it is still a safe car unless I do not drive it properly.

Q. BY MS. POLK: Thank you. You were asked questions about the lawsuits and the lawsuit that your nonprofit and your limited liability filed against James Ray. Did your business suffer as a result of the deaths of the three victims on October

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8, 2009, at the spiritual -- at the Angel Valley Center?

A. Yes.

Q. And in what way did your business suffer?

MR. LI: Your Honor, objection. Relevance.

THE COURT: Overruled.

THE WITNESS: We had an increasing and expanding and growing business until the fall of 2009. And after that we have distinctly less people who are connecting with us. And we feel it has directly to do with people who are afraid they're going to a place where there is not good reputation. It has definitely damaged our reputation.

And until everything is completed and finalized and there is more clarity into what has been our role -- are we part -- in what way we are part of it -- we expect that will continue for a little while.

Q. BY MS. POLK: Have fewer groups attempted to or asked to use your facilities, to rent your facilities?

A. Yes. Groups have asked. And those who have come have been very, very, very positive. It's just that the phone doesn't ring the way it used

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to. And we think people are holding back.

Q. Do you believe that James Ray improperly used your facilities?

A. Yes.

Q. And in what way?

MR. LI: Objection, Your Honor. Relevance.

This is not -- now we're talking about the actual civil lawsuit.

THE COURT: And I admitted that complaint,

1 Exhibit 80, that you offered. I really don't think
1 we need to talk a lot about this.

1 But you may answer that question.

1 THE WITNESS: There was no reason why a safe,
1 beneficial, good ceremony could not have been
1 performed. Instead, the ceremony was done in such a
1 way that it ended in a disaster. And that could
1 have been avoided.

1 Q. BY MS. POLK You were asked about the
1 events of October 8th after the police came and a
2 meeting that occurred in the dining room at Angel
2 Valley Center. You were present, and participants
2 had been gathered in the dining room?

2 A. Yes.

2 Q. First of all, was James Ray there?

2 A. No.

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Q. And where was he?

A. First he for quite a while --

MR. LI: Objection, Your Honor. Relevance.

And privilege too. If I may?

THE COURT: Yes. Go ahead, Mr. Li.

MR. LI: If I may approach at sidebar?

THE COURT: I can see the possible issues of privilege, Ms. Polk.

MS. POLK: Judge, I can move on.

1 THE COURT: Yes.

1 Q BY MS POLK You were asked,
1 Miss Hamilton, about -- actually, Mr. Li read from a
1 police report created by one of the other detectives
1 and read to you something that he suggested meant
1 that you'd never had any other problems at the Angel
1 Valley resort. In fact, had you never had a problem
1 involving the death of participants in the sweat
1 lodge before?

1 A. That's exactly the chaos. And people
2 dying -- that has been something I have never
2 experienced before nor expected.

2 Q. To your knowledge, did James Ray ever do
2 any follow up to determine what medically had
2 happened to Daniel Pfankuch?

2 A. No. Not that I am aware of. Neither did

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I know what happened to Daniel any further.

Q. And then you were asked some questions about comparing some of the things that JRI has put into place since the 2005 incident, such as training his staff CPR, the suggestion was made that there was a registered nurse stationed outside --

MR. LI: Objection, Your Honor. This is not a question.

THE COURT: If it's a preface to a question,

1 Ms. Polk?

1 MS. POLK: It is a preface to a question.

1 THE COURT: Go ahead.

1 Q. BY MS POLK. The suggestion was made that
1 a registered nurse had been stationed outside in
1 2009. And you were asked whether or not those
1 precautions had been taken with respect to nonJames
1 Ray sweat lodge ceremonies. And you said no.

1 A. No.

1 Q. And can you explain why not.

2 A. Because I would not want situations that
2 are taking place on the property that are death
2 risky that that would be needed, in particular CPR
2 training.

2 Q. And in your experience and in your
2 opinion, the sweat lodge ceremonies conducted at

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Angel Valley Center -- should they be that risky?

MR. LI: Objection, Your Honor. With respect to the opinion, as long as it's her own personal opinion and it doesn't have anything to do with any broader discussion of outdoor practices, what have you, I won't have an objection.

THE COURT: That's the only way I would accept that is just her personal opinion on that basis.

You may answer that.

1 THE WITNESS: Our policy is to not stretch
1 experiences to such a degree that those precautions
1 have to be taken other than if there is a completely
1 unforeseeable accident that could not be taken care
1 of by paramedics being called in.

1 We have never had the desire to have
1 situations like that. With James Ray that was
1 borderline, what was acceptable for what we want
1 to -- what we have in our philosophy to do at Angel
1 Valley.

2 Q. BY MS POLK: And in what way was it
2 borderline?

2 A. Having sweat lodges that are that intense
2 that -- like in 2005 we did have to call 911 because
2 of something went wrong that could have been
2 avoided. That was on the edge of what we -- what

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was okay for us.

Q. You were asked a little bit about 2008.

Is it your testimony that events occurred but you're not aware of them in 2008?

MR. LI: Objection, Your Honor. That's always the case. There are always events occurring that people are not aware of.

THE COURT: Ms. Polk, sustained as to the form of that question.

1 MS. POLK: I'll reask it.

1 Q. In 2008 are you aware that there were some
1 problems with the sweat lodge ceremony performed by
1 James Ray?

1 A. At the time I was not. In 2009 I was
1 not. Today I am.

1 Q. And then finally, you described how after
1 the crime scene was cleared by the sheriff's office
1 that you performed a cleansing ceremony?

1 A. We did.

2 Q. Why did you do that?

2 A. We wanted to remove the chaotic
2 environment that was there at that moment. We
2 wanted to clean up the land. We wanted to do
2 energetic clearing. That may not speak to just
2 anybody, but for us it was important because it was

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a lot of trauma energy in the air.

We needed to clear that for ourselves. We were ourselves heavily traumatized, and we needed to clear that for people who would come in. We would have people coming in very shortly. It's a spiritual place, but it's also a business. So we had to clean for the next people who would come in. And that's what we did.

And we likened it to when there is a
1 traffic accident. After everything has been
1 investigated, the car wreck is removed. Why would
1 people leave it there for the next two years?

1 Q. How did you -- did you seek out help in
1 determining what kinds of cleansing ceremony to
1 perform?

1 A. We did. We asked first and foremost for
1 help personal. Because for us we were devastated
1 ourselves. But we had to act at the same time. So
1 we could not sit down with our feeling miserable,
2 feeling upset. We had to take action.

2 Q. The stones that are used inside the sweat
2 lodge ceremony -- is there another name for them?

2 A. In the traditional they call them
2 "grandfathers." And in the traditional Native
2 American way, James Ray did take that part out of

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the Native American tradition. He called them
"grandfathers" too.

Q. Did you do something with those
grandfathers or those stones that are still at the
scene today?

A. The stones that were inside that
particular ceremony -- we took them outside of that
pit. They formed the shape of a heart, and that
heart is still there.

1 Q. Thank you, Miss Hamilton.

1 Thank you, Judge.

1 THE COURT: Thank you. May Miss Hamilton be
1 excused as a witness in this proceeding, Counsel?

1 MS. POLK: Yes, Your Honor.

1 MR. LI: Yes, Your Honor.

1 THE COURT: Okay.

1 Miss Hamilton, you are excused as a
1 witness in this proceedings. The rule of exclusion
1 I've explained to you. That applies throughout this
2 hearing. It appears that will be going into
2 tomorrow as well. So it applies throughout the
2 hearing. All right?

2 Thank you. You are excused at this time.

2 State's next witness.

2 MS. POLK: State calls Ted Mercer, please.

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THE COURT: Stand where the bailiff directs
you, raise your right hand and be sworn by the
clerk.

THEODORE M. MERCER,
having been first duly sworn upon his oath to tell
the truth, the whole truth, and nothing but the
truth, testified as follows:

THE COURT: Please be seated here at the
witness stand.

1 Would you please begin by stating and
1 spelling your full name.

1 THE WITNESS: Theodore Martin Mercer;
1 T-h-e-o-d-o-r-e, M-a-r-t -- M-a-r-t-i-n,
1 M-e-r-c-e-r.

1 THE COURT: Ms. Polk?

1 MS. POLK: Thank you.

1 DIRECT EXAMINATION

1 BY MS. POLK:

1 Q. Good afternoon, Mr. Mercer.

2 A. Hi. How are you?

2 Q. And thank you Mr. Mercer, do you -- you
2 are a resident of the Verde Valley area, is that
2 correct?

2 A. That's correct.

2 Q. And in 2007 you had some involvement at a

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place called "Angel Valley Retreat Center"?

A. That's right.

Q. How did you learn of Angel Valley Retreat Center?

A. On line. We were coming up to angel -- we were coming up to the Sedona area and looking around and just exploring the Sedona area. And my wife had found it on line. So we went down there and started exploring down there.

1 Q. Was that in 2007?

1 A. I'm thinking it might have been in 2006,
1 maybe early 2007.

1 Q. In 2007 did you develop a relationship
1 with the owners of the Angel Valley Retreat Center?

1 A. Yes, we did.

1 Q. And in 2007 did you ultimately volunteer
1 in connection with a sweat lodge ceremony that was
1 being conducted there?

1 A. Yes.

2 Q. And why was it that you volunteered for
2 that ceremony?

2 A. Well, we've been going up to Angel Valley
2 quite a bit and volunteering with doing some
2 landscaping work and just helping around the area.
2 And that volunteering actually turned into more

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work, actually, more volunteering, because they kept asking us to come back. And so it was just part of what we were doing there at the time.

Q. Prior to the sweat lodge ceremony in 2007, had you ever done a sweat lodge ceremony yourself?

A. No. Never even heard of it before.

Q. So you've never been on the outside or the inside of one before that?

A. No.

1 Q. Were you in charge of the sweat lodge in
1 2007?

1 A. I wasn't in charge of it. I was one of
1 the fire keepers.

1 Q. Will you explain to the Court the rule of
1 the fire keeper.

1 A. Well, the fire keeper is the person who
1 takes care of the rocks before they go in. So what
1 we do is we gather up all of the lava rocks. We get
1 them in a pile. We put them in the fire pit. We
2 pile a bunch of wood over the fire pit and we start
2 the fire. We just make sure the rocks are always
2 covered and there is always a good fire going before
2 and during the sweat lodge.

2 Q. Who would you say was in charge of not the
2 sweat lodge ceremony but just the sweat lodge and

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the fire in 2007?

A. His name was Gary Palisch. He was the door keeper. That's who is usually in charge of the fire.

Q. Had you met James Ray before 2007?

A. Oh, no.

Q. Did you meet him in 2007?

A. No. Not officially. We didn't meet.
No. He tried to back his car up one time, and our
1 golf cart was in the way. He got out of his car and
1 asked us to move the golf cart. That was the only
1 interaction I had, at least prior to this last one.

1 Q. I think you testified that the sweat lodge
1 ceremony conducted by James Ray in 2007 was your
1 first?

1 A. Yes.

1 Q. Did you know what to expect?

1 A. I had no idea.

1 Q. Describe for the Court just generally what
2 you observed in 2007.

2 A. Well, we -- just what I observed of the
2 sweat lodge or what do you want to know? More about
2 how it was built and everything or just what we
2 observed?

2 Q. Did you participate in the building of the

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sweat lodge?

A. Yes.

Q. Thank you. Let me back up a little bit.

A. Okay.

Q. Mr. Mercer, I'm going to show you exhibits
16, 17, 18, 19, 20 and 21. Will you just take a
moment to look at those, please.

A. Okay.

Q. Do you recognize all those photographs?

1 A. I certainly do.

1 Q. I'm going to put up on the overhead
1 Exhibit 17, which has already been admitted.

1 Are you in this photograph?

1 A. Not that one I'm not.

1 Q. You talked a little bit about the
1 construction. Were you involved in the construction
1 in 2007?

1 A. Well, see, now that sweat lodge there was
1 not the sweat lodge we used in 2007. That's a new
2 kiva that we built specifically for James Ray.

2 Q. So these are actually 2008?

2 A. Yeah. They were for the 2009 sweat lodge.

2 Q. Okay. So let's talk about 2007 before we
2 look at the photographs from 2008 and 2009.

2 A. Okay.

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Q. The construction of the sweat lodge, then, you participated in under somebody else's direction?

A. That's correct.

Q. And then later when the sweat lodge ceremony was conducted, you were present?

A. Yes.

Q. And you were helping tend the fire?

A. Yes.

Q. At some point did people start coming out of the sweat lodge that appeared to be sick to you?

1 A. Yes.

1 Q. Tell The Court what you first observed in terms of people being in distress.

1 A. Well, when they first started -- when the people first came to the sweat lodge, they all got in a line and they all got inside the sweat lodge. They all crawled in and got in their spot. We brought in a bunch of rocks. I can't say exactly how many the first time.

2 But we brought in a bunch of rocks. And the door closes, put some water on it. And then the steam builds. And then after about -- you know -- 15, 20 minutes they open the door. And every time they open the door, some people would come out.

2 The first round I wouldn't say there was

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anybody in real distress. But they were awfully heated up and needed to get out and cool down a bit.

But the second round I do remember there was one girl in particular that she crawled to the door and landed flat on her face. And she was actually passed out. This is the first time I've ever had to pull everybody out. When we rolled her over, her eyes rolled up to the back of her head, and we pulled her out of the door of the sweat lodge and put her aside. And then we have to go back to tending the fire.

1 And then James Ray's Dream Team were taking care of the people over there. As it progressed, more and more people came out. The third or fourth round another handful of people or so came out. And they were -- you know -- they were overheated. Some of them were crawling out and couldn't -- you know -- couldn't stand up and crawled out of the sweat lodge to where we had a bunch of tarps put up so they could get hosed down and cooled off.

2 As the sweat lodge went on -- you know -- more people kept on coming out and less and less would go back in. And every round they opened up,

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more people would come out. And by the time it was done at least half of the people were out, as far as I can remember.

Q. Who tended to the people who came out?

A. Mostly the first sweat lodge was the James Ray people that were around. Because we were told to take care of the fire, and those people were going to be okay. So don't worry about them. Our focus was on the fire.

1 Q. Why was it, then, that you helped drag the lady who had fallen down?

1 A. Because I was right at the door. And -- you know -- the fire tender -- when the door opens, we have to be attentive to the people who come in and out. And sometimes the person who is running the sweat lodge wants water or wants something from us. So we have to be there to give him what he needs. So I just happened to be there when she came out.

2 Q. By the time the sweat lodge ceremony ended in 2007, do you recall how many people were still inside approximately?

2 A. Probably around half, maybe less than half.

2 Q. Do you recall whether or not there was any

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pressure put on those who had come out in 2007 to go back into the ceremony?

MR. LI: Objection. Foundation.

THE COURT: Sustained.

Q. BY MS. POLK: Let me reask you that question. With respect to the people who came out in 2007, did you hear anybody belonging to the James Ray team -- either James Ray or his team -- put any pressure on them to get back into the sweat lodge?

1 A. Every time the door opened, before they were about to close it they asked if anybody wanted to come in. And so the James Ray people would go around and ask them if you want to come. You want to go in? And they would say no or yes.

1 So if they said yes, they'd help them back to the door. And if they said no that first year, no, there wasn't that much pressure put on them. It seemed like it was okay to be in or out and it was your comfortable -- your comfort level.

2 Q. And in 2007 with respect to the people who came out, to your knowledge, was any medical care given to them?

2 A. No.

2 Q. Did you see anything that concerned you personally about their medical state?

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A. Yes. I was completely shocked through the whole thing. I mean, I've never seen a sweat lodge before so I didn't know what to expect. When people are coming out and they're eyes are up in their head -- I mean, their eyes are rolled up in the back of their head. You know, I didn't know what to think.

And then there was two ladies that I remember in particular that after the sweat lodge was over, they had no idea what their names were or what day it was or what the year was or anything for at least two and a half hours after the sweat lodge. And then I went home and went to bed after that. And the next day I saw them, and they seemed to be fine.

But yeah. They were very incoherent. And I talked to both of them -- you know -- over half an hour each just to help them see if I could help them get their memory back. But it didn't seem to do anything. They were just completely spaced out.

Q Were you expected by James Ray or Angel Valley to try to assist the participants from the 2007 sweat lodge?

A. No.

Q And why did you engage yourself in

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particular with those two women?

A. Because I just felt bad for them -- you know. I was there and I felt like I needed to do something. So I did what I could.

Q. Did you notice whether James Ray or his staff was doing anything for the participants in 2007?

A. Yes. Not James Ray himself, but the staff was there and they were assisting people. They were very -- they were there assisting people. Yeah.

Q. Were they doing what you were doing or something different?

A. No. They were pretty much doing what I was doing. There was just a lot of people around that needed help. So I went to the people that -- you know -- might not have had a James Ray person there but one of the participants might have been there with him. You know. Like, the roommate was with them or something.

So I went and talked to them for a while. You know, you kind of make a little bond with these people after working with them a little while. You care about them so you want to see them be okay. So you do whatever you can.

Q Okay Let's talk about 2008 now and

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Exhibit 16 that's up on the overhead. In 2008 a new sweat lodge was constructed on the property of Angel Valley?

A. After the 2008 sweat lodge, yes. Because that was just -- as far as I remember, it was just for the 2009 sweat lodge.

Q. Do you recall if the lodge was put up -- a new lodge was put up in 2008 as well?

A. No.

Q Did you participate in resurrecting or constructing the lodge in 2008?

A. Yes.

Q Who was in charge of the construction in 2008?

A. Of building that lodge or just --

Q I'm sorry. Yes. For constructing the sweat lodge.

A. Well, Michael Hamilton told us that we needed to build a new sweat lodge. So Gary Palisch was the general manager at the time. And he put in charge a man called David Singing Bear. And he came in with his nephew and told us exactly how many sticks to get. Because we go up and get the willow sticks and we dry them out a little bit, and we dig the holes, and we build it.

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So he told us exactly how many holes to put in and how many sticks to get and how to construct the lodge. So myself, my wife, a woman named Anita and another guy named Brian put it together underneath David Singing Bear's instructions.

Q. Okay.

A. And that was just the kiva. That wasn't covering it or anything. That was just the branches.

Q. When you say "kiva" --

A. The kiva is the structure that you see being built there. And it isn't actually a sweat lodge until you cover it with blankets and stuff.

Q And in 2008 after the sweat lodge had been constructed, what was your role when James Ray performed his ceremony then?

A. I was the fire keeper on that one.

Q. Once that ceremony began, did after a round or so -- I'm talking about 2008 now. Did people start coming out like they had in 2007?

A. Yeah. It was, basically, the same thing. The first round people came out because they were just too hot. And most of the people didn't go back in. It seems like the first round people just

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decided they don't like it or not so they come out.

And then yeah. The second round more people started coming out, more people in distress. We had tarps out and hoses where the James Ray people would be hosing them down to cool them off.

And it was, basically, the same. It was chaos through the whole thing, basically. People come out and they're -- we have to drag them away from the door because they're throwing up or they're -- you know -- they're incoherent. By the time they hit that cold air again, it shocks them a bit too.

So we're pulling them out and taking them to the tarps and the same procedures were happening -- you know. They were hosing them down and trying to get them back to sitting in chairs and back in the sweat lodge if they could. But it was, basically, the same thing.

Q Did you see things that concerned you in 2008?

A Yes, I did. There was a Japanese woman that went into convulsions. Her whole body -- her muscles tensed up. So she couldn't even move them. They were locked like this. And there happened to be a doctor there. This guy said he was a doctor.

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He carried her off to the showers. And I was there with her until she got to the shower. And then I went back to the sweat lodge.

And then again there was two or three ladies that didn't know their name. They didn't know where they were or what year it was or what was going on until the next day.

Q About how many people would you say in 2008 you saw in medical distress?

A 20, 25 people.

Q And by the time that ceremony was entering its last round, how many people would you say were still inside the sweat lodge in 2008?

A A little less than half.

Q And the same question I asked you earlier. Did you hear whether James Ray or his staff encouraged people who were outside to come back in the sweat lodge?

A They always encouraged them to come back in. You know, they encouraged them to come back in and -- you know -- they wanted them back in because that was all a part of the sweat lodge.

And -- but I don't know if they were pushing them to get back in like they did the year after that. But yeah. There was encouragement.

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They would say come on. Let's go back in. Let's do the sweat lodge. And you're learning something or you're growing somehow. So yeah.

Q And you just made reference to the year after that. Are you referring to 2009?

A Yeah.

Q You were present also when James Ray performed the sweat lodge ceremony in 2009?

A That's correct.

Q And was there a difference, then, that you were just referring to between the encouragement to get back into the sweat lodge between '07, '08 and then what happened in 2009?

MR. LI: Objection. Lack of foundation.

THE COURT: Sustained, Ms. Polk. His basis and knowledge.

MS. POLK: Okay.

Q In 2009 -- I'm going to put up on the overhead, Mr. Mercer, Exhibit 21.

I'm sorry, Your Honor. Exhibit 21 has not been admitted. I move for its admission.

MR. LI: No objection.

THE COURT: Exhibit 21 is admitted.

(Exhibit 21 admitted.)

Q BY MS. POLK: I'm going to put Exhibit 21

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and just have you tell the Court -- I believe this is actually 2008. I believe this is a photograph taken by your wife in 2008. I could be wrong. But do you recognize this as the sweat lodge ceremony or the sweat lodge used either in 2008 or 2009?

A Yes.

Q Which one do you think it is?

A I'm thinking it's the 2009 just because of the wood that we were using.

Q Okay. Could you describe for the Court -- we've gone from the -- I think you called it a kiva shown in Exhibit 16?

A Uh-huh.

Q How do we get from that frame to what we see in Exhibit 21?

A Well, the last picture that you had up didn't have all of the frame up yet. So that was just the beginning of the frame. So as you can see here, that the frame had gotten finished. And what we do is we get a whole bunch of blankets and we lay it over the top of the frame.

Q I'm going to put Exhibit 8.

A There you go. That's the finished kiva there. So what we do is we get blankets and start at the top, and we start draping them down all the

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way down to the sides until it hits the ground. And then we overlap it on the ground about an inch or two or more -- a foot I guess I would say.

And then after we get it all covered with the blankets, we get the tarps and we put the tarps on top. And the after the tarps --

Q. I'm going to go back to Exhibit 21.

A. Yes. And then that's covered with all the tarps, the blankets, the tarps. And then there was this special rubber membrane or this special rubber thing that Michael had made specially for the sweat lodges that we put over the top of the whole thing just in case the wind picks up or something to seal it really good. And then we put the rocks around the side to seal the edges so no air gets in and out of there. And then I have to make that door. I made it out of some real heavy blankets and sleeping bags.

MS. POLK: Your Honor, I move for the admission of Exhibit 19.

MR. LI: No objection.

THE COURT: 19 is admitted.

(Exhibit 19 admitted.)

Q. BY MS. POLK: I'm going to put 19 up on the overhead, Mr. Mercer. What does that show us?

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A. That's the inside of the sweat lodge. My wife and my dog are in there. And the hole in the middle is where the rocks go into when they get heated up.

And that I think is the done sweat lodge. It's ready to go except for I think we still had to put some tarps on that because you can kind of see through here. On the left side you can see through the light there. And after we had put it up, it's pretty dark. If we put the top down you wouldn't be able to see anything.

Q. Okay. In 2009, then, you're the fire tender for the sweat lodge ceremony performed by James Ray?

A. Yes.

Q. And were you there from the beginning to the end?

A. Yes.

Q. At some point were you aware that there were some problems with respect to the medical condition of the participants?

A. Well, yes. Right from the beginning people started coming out just like before. And I'm not a doctor --

MR. LI: Your Honor, move to strike. This is a

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narrative.

THE COURT: There was a yes or no question originally posed.

It is my practice to take a recesses at 90 minutes, Counsel. We're right about there.

Sustaining the objection. And we will resume at five after 3:00. Thank you.

I need to tell the witness.

Mr. Mercer, the rule of exclusion of

witnesses has been invoked in this hearing. That means you cannot talk about your testimony or the case with any other witness in this hearing until the hearing is completely over. You can talk to the lawyers but you can't talk to other witnesses until this hearing is over.

Okay?

THE WITNESS: Okay. So my wife is there. I can't go talk to her?

THE COURT: Not about the case.

THE WITNESS: I understand.

THE COURT: You need to be careful while the hearing is in progress here. So keep that in mind. Do not talk to any other witness about the case in any fashion until this hearing is complete.

THE WITNESS: I can do that.

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(Recess.)

THE COURT: Record will show the attorneys are all present. The witness, Mr. Mercer, has resumed the witness stand. He is still under oath, of course.

Ms. Polk is conducting direct examination and asked a question before the break having to do with whether or not Mr. Mercer had observed medical problems or something to that effect. I had sustained the objection. Although I think Mr. Mercer was qualifying by indicating he's not a doctor.

But, in any event, please resume,

Ms. Polk.

MS. POLK: Thank you. And, Your Honor, I want to back up a little bit and move for the admission of exhibits 19, 20, 22 and 24.

MS. POLK: No objection, Your Honor.

THE COURT: Okay. 19, 20, 22 and 24 are admitted.

(Exhibits 19, 20, 22 and 24 admitted.)

Q. BY MS. POLK: And, Mr. Mercer, I want to show you again some of these exhibits, Exhibit 16, 17, 18, 19, 20, and 21, which show the construction of one of the sweat lodges. And there was some

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confusion, I believe, in your mind as to whether this was 2008 or 2009?

A. Yeah. I think after the 2008 James Ray sweat lodge we built a new kiva for the 2009 sweat lodge.

Q. Okay. And this could -- or perhaps is 2008? Could be 2008, 2009, the construction?

A. Yes.

Q. Okay. And then talking specifically about 1 2008, you talked about people in distress?

1 A. That's correct.

1 Q. Now I'm going to show you exhibits 22, 23
1 and 24. Do you recognize these exhibits?

1 A. Yes.

1 Q. Let me put them up on the overhead.
1 Starting with Exhibit 22 that I put on the overhead,
1 what year do you recognize this to be a photograph
1 from?

1 A. I would think that's a 2008 sweat lodge.

2 Q. Why do you recognize it as a --

2 A. The girl in the purple shirt was present
2 in the 2008 sweat lodge.

2 Q. Let me show you now Exhibit 23. Do you
2 recognize that also to be 2008?

2 A. Yeah. I think so. It's because in 2009

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we had put down tarps on the ground so everybody wouldn't have to be laying on the dirt.

Q. When you testified about people in distress in 2008, do you see in this photograph illustrations of what you saw in 2008?

A. Yes.

Q. Specifically --

MR. LI: Objection, Your Honor. Foundation.

THE COURT: I didn't hear the rest of the
1 question.

1 Complete the question, please.

1 MS. POLK: I'm asking the witness what he sees
1 in this photograph that illustrates the medical
1 distress that he testified to in 2008.

1 MR. LI: Assumes facts not in evidence, Your
1 Honor.

1 THE COURT: In what sense, Mr. Li?

1 MR. LI: Medical distress is a technical term.

1 THE COURT: I mentioned before I think
2 Mr. Mercer was indicating he's not a -- doesn't have
2 medical training or is not a doctor, something to
2 that effect. So it has to do with Ms. Polk
2 referring to these as medical issues.

2 Sustained on that very technical grounds,
2 Ms. Polk.

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MS. POLK: I can use a different term, Your Honor.

Q. Mr. Mercer looking at Exhibit 23, do you see -- can you tell the Court if this illustrates what you saw in 2008 in terms of people being in some form of distress?

A. Yes.

Q. And tell the Court specifically what you see in this photograph.

1 A. Well, some of the people that are laying
1 on the ground aren't just laying on the ground
1 because they're tired. I can remember some of these
1 people, especially this person in the blue shirt
1 there.

1 MR. LI: Objection, Your Honor. I'm going to
1 move to strike this. The picture speaks for
1 itself. And the witness is offering various
1 opinions about what he thinks the physical and
1 medical condition of all the people in the picture.

2 THE COURT: I'm going to accept this as just a
2 lay person's observation. So overruled. I didn't
2 know who he was referring to in the picture being.

2 Q. BY MS. POLK: I'm going to show you,
2 Mr. Mercer, something cool about this technology.
2 You can actually press on the screen, and everybody

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can see what you're referring to, pointing to press on the screen where you need to point.

A. Well, this person here -- she was -- she was one that had been dragged out of the sweat lodge and was passed out when we took her out. I can remember that. And other than that, the picture isn't the best so I can't really tell who the other people are.

Q. I'm going to put up on the screen
1 Exhibit 24.

1 THE COURT: Just a technical point. This is
1 Exhibit 23 that's up there. And technically it
1 hasn't been admitted.

1 Any objection?

1 MR. LI: No, Your Honor.

1 THE COURT: 23 is admitted.
1 (Exhibit 23 admitted.)

1 MS. POLK: I'm sorry, Your Honor. I move to
1 admit exhibits if they've not been admitted already.

2 THE COURT: 19, 20, 22, 23 and 24 now are
2 admitted.

2 MS. POLK: They're all admitted, then.

2 Q. I'm going to put up on the screen,
2 Mr. Mercer, Exhibit 24. Do you recognize anything
2 from this photograph?

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MR. LI: Objection as to the form of the question.

THE COURT: Sustained.

Q. BY MS. POLK: Mr. Mercer, looking at Exhibit 24, do you see people in this exhibit that you recall from 2008 believing that they were in some form of distress?

A. Well, with my experience with the sweat lodges, most people when they come out, they don't need to be dragged off to the side and hosed down and put blankets on to cool down. Most of them get up and walk out through the door after they get there, and most of these people we had to pull away from the door.

1 There was a bunch of us taking people and
1 just dragging them away from the door because there
1 was a bunch of them coming behind them.

MR. LI: Objection, Your Honor. Nonresponsive.

THE COURT: I'm going to let the answer stand as far as it's proceeded. It originally did start with a yes or no, the question that called for a yes or no response.

Ms. Polk, please ask another question.

Q BY MS POLK: With respect, Mr. Mercer, to the people you had to drag from the door, where did

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you take them?

A. We took them over to the right side of the sweat lodge, over where the water was, and tried to get them -- you know -- away from the front of the sweat lodge and away from the fire so they'd have a chance to cool down.

Q. In 2008 who was tending to those people who had to be dragged out from the sweat lodge?

A. Just about anybody that was outside. The James Ray people were helping because there was a group of them that were outside of the sweat lodge the whole time. And myself and my family were helping. And then a lot of the participants -- some of the participants were helping other participants.

1 So it was like kind of a group effort --
1 you know. When something like that goes bad, then
1 everybody chips in to do what they can.

Q. Did you see differences between the ceremony and the participants from 2007 to -- between 2007 and 2008 in terms of the scene afterwards when it was over?

A. No. It was pretty much the same.

Q. Did you see any improvement or less chaos in 2008 than you had seen in 2007?

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MR. LI: Objection as to form. I don't believe he's ever said chaos.

THE COURT: The question is about improvement.

You may answer that if you can,

Mr. Mercer.

THE WITNESS: I saw more people in distress in 2008 than I did in 2007.

Q. BY MS. POLK: Did you ever have any conversations with James Ray about the number of people in distress?

A. No.

Q. Did Mr. Ray ever approach you about your contribution to taking care of the people in distress?

A. No. Actually, we were told not to approach James Ray because he doesn't want us to talk to him.

MR. LI: Objection. Foundation.

THE COURT: Sustained. That answer is stricken.

Q. BY MS. POLK. Have you also been involved at Angel Valley Center in other sweat lodge ceremonies?

A. Yes.

Q. In what capacity and when?

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A. I was the fire keeper and door keeper during 2007, 2008.

Q. Do you recall approximately how many other sweat lodge ceremonies you were the door keeper or the fire tender for?

A. I think I probably did 10 sweat lodges, 10 or 12 of them all together. And only three were for James Ray.

Q. And are you talking about 2008 through -- or 2007 through 2009 now?

A. That's correct.

Q. Did you ever see any problems at the nonJames Ray sweat lodge ceremonies similar to what you had seen for the James Ray sweat lodge ceremonies?

A. Not at all.

Q. What are some of the difference you saw between the James Ray ceremonies and the nonJames Ray ceremonies?

MR. LI: Objection. Relevance.

THE COURT: Overruled.

You may answer.

THE WITNESS: The biggest thing was the number of people inside the sweat lodge. Usually -- you know -- 12 to 15 people would be the max. And then

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the next thing would be how many rocks were brought into the sweat lodge in itself. Usually -- you know -- there are 15 or 20 all together.

And then the sweat lodge in between rounds they open up the door, and the guy at the door that's running the sweat lodge is really attentive to the people in the sweat lodge, making sure that they're cooling down enough. They leave the door open for 10 or 15 minutes at a time. They make sure everybody needs water, if anybody needs to come in or out.

They're in contact with each and every person in the sweat lodge in making sure that each and every person is okay. And if they're not, well, then we -- you know -- we help them out. They cool down and usually go back in.

Most of the time people do get overheated, so they come out to cool down a bit or they just open the door and let it stay open for a while until people are okay, and then they do the next round.

Q BY MS POLK: In 2009 you were also present at the sweat lodge ceremony conducted by James Ray on October 9?

A That's correct.

Q And your role at that time was what?

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A I was a fire keeper again. But actually, it was my wife and I that were hired for it. I was the fire keeper, and then she sat at the door all the time.

Q Okay. And to clarify, in 2007 you were volunteers; is that correct?

A Yes. That's correct.

Q And 2008 did you get hired or employed by Angel Valley?

A I was employed by Angel Valley. I was the property manager.

Q From what date to what date?

A From approximately March of '07 to December of '08.

Q What happened after December of '08?

A Management changed. The general manager that was there left, and we decided not to stay employed at Angel Valley.

Q What was your relationship then in 2009 in terms of employment and the sweat lodge ceremony conducted in October?

A Well, Michael Hamilton asked me if I'd be interested in being the fire keeper for the sweat lodge. And I had some reservations about it, but eventually I said yes, I would do it.

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Q And why did you have reservations?

A Because of the last two years. The chaos actually that went on during those last two years and the people that were coming out and just -- it was a bad scene. And I didn't know I wanted to be part of it again. I think the ultimate reason we did do it was because I needed some money. I hadn't been employed for a while and I could use some cash. It was a good job.

Q So let's talk about 2009, then,

October 8. Once the sweat lodge ceremony began, you remained outside tending the fire?

A That's correct.

Q At some point did you see something that started to concern you?

A Well, it always concerned me when people started coming out and they're -- you know -- landing in the dirt face first. We have to drag them away from the door. That's not usually a good thing. As the night progressed --

MR. LI: Move to strike as a narrative, Your Honor.

THE COURT: Overruled.

THE WITNESS: Okay. As the night went on, people came out of the sweat lodge but not as many

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it didn't seem like. It was -- everything was the same. People would come out and they would have their troubles. The first -- you know -- round the handful of people came out that didn't go back in.

And then it just progressed the same as the others except for about three quarters of the way through this gentleman thought he was having a heart attack. And there was making an awful lot of noise about that. And actually James from the sweat

lodge called out to him and told him that he'd be fine and don't worry about it. You're just going through whatever you need to go through.

Q BY MS. POLK: And you heard that?

A Oh, yeah. That was very loud. It was -- they were yelling back and forth. Well, the reason I think James stopped and talked to him is because he was so loud, making so much noise, saying I'm having a heart attack.

MR. LI: Your Honor, move to strike as speculation.

THE COURT: Granted as to that one remark.

Q BY MS. POLK: Mr. Mercer, do you know the name of the person who yelled out he was having a heart attack?

A I couldn't recall.

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Q. And will you tell the Court more specifically when in terms of the ceremony that incident occurred.

A. That was after the fifth round, I would say.

Q. And what happened specifically? Did the man come out of the sweat lodge?

A. Yeah. He came out. And he got to the door, and we had to drag him the rest of the way.

1 But then the James Ray people were taking care of
1 him, and I went back to the fire.

1 Q. And why did you have to drag him when he
1 got to the door?

1 A. Because he couldn't walk himself. He gets
1 there -- you get to the door and most people pass
1 out once they get that transition between the hot
1 and the cold. By that time -- usually it's getting
1 dark. At that time it was still during the day.

1 Q. You helped drag him to an area where?

2 A. Over where we had the tarps put out so
2 they could lay there and get cooled off.

2 Q. And you said the man started yelling?

2 A. Her started -- yeah. He started yelling
2 I'm having a heart attack. I'm going to die. I'm
2 having a heart attack. I'm dying. I'm dying. And

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then that's when James Ray --

Q. What did James Ray say?

A. Well, he called his name a couple times and got his attention and told him that he's not going to die. He's going to be fine and that he is where he's supposed to be in his journey, something quite -- something like that. But he said he'd be fine. He says you're going to be fine. Don't worry.

1 Q. Where was James Ray when he said yelled
1 that out?

1 A. He was inside the sweat lodge.

1 Q. Was the door open or closed?

1 A. I think it was closed.

1 Q. How did the man respond after James Ray
1 yelled out and told him he wasn't going to die?

1 A. He calmed down. And that's -- I think
1 that's about all I remember. I don't remember
1 saying anything.

2 Q. Did anything happen after that that drew
2 your attention?

2 A. To him?

2 Q. No. In terms of sweat lodge
2 participants

2 A. Yeah. It -- you know -- as it went on,

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people were coming out like usual, but not as many people were coming out. And they keep on asking if you want to come back in. Do you want to come back in?

And at one point one lady wanted to go back in. She got to the door and she decided that she didn't want to go back in. And there was one person behind her, one of the James Ray dream people pushing her, pushing her trying to go back in. You can make it. You can make it. You can go back in.

1 And she got into the door just a little
1 bit, and she came out. She just decided that she
1 wasn't going to go back in. There was a lot of
1 pressure to get her back in and some of the other
1 people. They seemed like they were pushing a little
1 bit more this year than usual.

1 Q. By the time the ceremony in 2009 came to
1 an end, were you tracking how many rounds were done?

1 A. Yeah. I think there was about eight
2 rounds done.

2 Q. Was that -- did that strike you as
2 unusual?

2 A. Well, yeah. Well, not for James Ray it's
2 not unusual.

2 MR. LI: Your Honor, I'm going to object to

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this further line of questioning. This is beyond the scope of the 404(b) hearing.

THE COURT: Ms. Polk, if you would respond to that, the relevance.

MS. POLK: Judge, I can -- with my next question I think I can clear that up.

THE COURT: Go ahead.

Q. BY MS. POLK: By the end of the sweat lodge ceremony in 2009, did you notice a difference in the number of participants still inside versus '07 and '08?

1 A. Yes.

1 Q. And what was that difference?

1 A. Usually there would be more than half of
1 the people out. This time there was considerably
1 less than half the people out. The sweat lodge was
1 still pretty full.

1 Q. And did you notice a difference from the
1 2009 ceremony, comparing the 2009 ceremony to the
2 ceremonies in '07 and '08, a difference in the
2 encouragement or pressure on participants to stay in
2 or go back into the sweat lodge?

2 MR. LI: Objection as to form, who is applying
2 the pressure. And also foundation.

2 THE COURT: Sustained as to foundation.

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MS. POLK: Judge, at this point it's just a yes or no question. If he says yes, I can lay the foundation for how he notices it.

THE COURT: The specific area of foundation had to do with tying the encouragement to whom, who was actually doing that from this person's perspective.

I sustained on that basis.

MS. POLK: Okay.

Q. Mr. Mercer, were you aware in 2009 of --
1 were you aware of anybody encouraging participants
1 to stay in the sweat lodge?

1 A. Yes.

1 MR. LI: Objection. Relevance.

1 MS. POLK: And who?

1 THE COURT: The who.

1 Q BY MS POLK And who was encouraging
1 participants to stay in the sweat lodge?

1 A. Mostly the James Ray people on the
1 outside. They would encourage the ones that came
2 out to go back in.

2 Q. And were you aware if James Ray himself
2 was encouraging people who had gone out to come back
2 in?

2 A. Well, yeah. Every times he opens the
2 door, he encouraged people to come back in.

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Q. And had you observed that in 2007 and 2008?

A. Yes.

Q. Was there a difference between '07 and '08 in terms of that encouragement and what you observed in 2009?

MR. LI: Objection as to foundation, who is doing the encouraging.

THE COURT: I'm making an assumption on that
1 based on the prior questions.

1 But, Ms. Polk, if you could -- just as
1 long as I know what this witness is saying about who
1 is doing the encouraging during the different
1 years. Again, from this witness's perspective. And
1 it's not clear to me.

1 Q. BY MS. POLK In 2009, Mr Mercer, who did
1 you hear encouraging participants to come back in?

1 A. Every time the door opened, James Ray
1 would -- every time the door would open, he would
2 ask if anybody would want to come back in before
2 they closed it.

2 And then his Dream Team, as they called
2 it, would go around to the people on the outside and
2 ask if they wanted to come back in or not. It
2 seemed like they were a bit more pushy in the last

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year than it was the other two years.

Q. And what you just described for 2009 -- did that happen in 2007 and 2008 as well?

A. Yes.

Q. And the difference, then, between '07-'08 and '09 was what?

A. Just the pressure that they put on them. They asked them a bit more and really encouraged them, really encouraged them, to go back in. And
1 the other two years they encouraged them but not as
1 strong.

1 Q. And, in fact, by the end of the ceremony
1 in 2009, what did you notice in terms of number of
1 participants still in the sweat lodge?

1 A. Well, there was three people --

1 MR. LI: Objection. Asked and answered.

1 THE COURT: Overruled.

1 You may answer that.

1 THE WITNESS: There was three people left in
2 the sweat lodge.

2 Q. I'm sorry. This is for the last round.

2 A. Oh. For the last round. Oh, jeez. There
2 was more than half of the people in there. I
2 couldn't tell you exact number. But there was well
2 more than half of the people still in the sweat

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lodge. And the rest of the people were just sitting around or laying in the dirt or doing whatever they were doing.

Q. In 2007 did you make any observations about whether or not Mr. Ray had a safety plan in place to take care of participants?

A. Not as far as I knew.

Q. And in 2008 did you observe whether or not Mr. Ray had a safety plan in place to take care of
1 his participants?

1 A. Not that I knew of.

1 Q And in 2009 did you notice whether Mr. Ray
1 had a safety plan in place to take care of the
1 participants?

1 A. I was told that he had a nurse on the
1 staff this time. So that was one of the deciding
1 factors of me helping with the sweat lodge, knowing
1 that there was a nurse there.

1 Q In 2009 did you meet the nurse?

2 A. Not officially. No. I kind of found out
2 who it was through other people. But I didn't
2 officially meet the nurse. No.

2 Q. Did you find out who it was before the
2 ceremony began?

2 A. I can't recall.

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Q. In 2009 do you recall seeing a nurse tending to participants who were in distress?

A. Well, the lady that called herself a nurse, yeah. I saw her attending to people. She had been on the outside the whole time of the sweat lodge.

Q. In 2007 did you have -- do you have any observations about whether staff knew how to take care of the people in distress?

1 MR. LI: Objection, Your Honor. Lacks
1 foundation, speculation.

1 THE COURT: Overruled.

1 You may answer that.

1 THE WITNESS: Repeat the question.

1 Q. BY MS. POLK: In 2007 did you observe
1 whether or not James Ray's staff knew how to take
1 care of participants who were in distress?

1 A. Well, it didn't seem like it because they
1 were doing the same things they were before, I
2 guess. No. I didn't see --

2 Q. And have you received any training in how
2 to take care of people emerging from a sweat lodge
2 ceremony who are overheated?

2 A. Well, no. Not in a particular -- people
2 in the a sweat lodge, no.

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Q. In 2008 did you observe whether James Ray's staff seemed to know how to take care of the participants who were in distress?

A. 2008 and 2007 were pretty much the same. The same people almost were there, and they did the same things.

Q. How about 2009? Did you observe whether staff seemed to know how to take care of people in distress?

1 A. That kind of was the shocker there because
1 they said they had a nurse there. And after my wife
1 and my daughter pulled out these people from the
1 back of the sweat lodge, she came over and she
1 didn't quite know what to do. And she was -- I
1 don't know if she was in panic or -- you know --
1 what her deal was, but she seemed like she wasn't
1 sure what to do.

1 Q. You referred to pulling people out of the
1 back of the sweat lodge. When did that happen?

2 A. That happened after the sweat lodge was
2 over and all the people had left. The door keeper,
2 my wife -- she looked there and saw there was three
2 people still laying in the sweat lodge.

2 And she went to James Ray and asked him if
2 she could open up the back of the sweat lodge to get

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them out. And I'm not sure what he said because I wasn't there.

But she decided to go to the back of the sweat lodge. She opened up the back, and there was three people laying there. And she pulled two of them out. My daughter was right there with them. So they pulled two of them out. And then I heard her calling for help.

So I went back to the back of the sweat lodge. And my daughter was trying to pull another guy out but he was just too big. So I grabbed his arm and pulled him out.

1 MR. LI: Objection. Beyond the scope. Also a
1 narrative.

1 THE COURT: Sustained.

1 Q. BY MS. POLK: Once you assisted in pulling
1 individuals out of the back of the sweat lodge, you
1 had contact or you had observations of the nurse who
1 was there in 2009?

2 A. Yes.

2 Q. What did you see?

2 A. She came over and saw the people laying
2 there. And I told her that their lips are blue and
2 they're not breathing.

2 MR. LI: Objection. Beyond the scope. Move to

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strike. Nonresponsive.

THE COURT: Sustained.

MS. POLK: On which grounds, Judge?

THE COURT: It's the relevance at this point, Ms. Polk. Tying this particular testimony into 404(b) and how another act might relate in and showing an exception under 404(b). I'm losing the concept of that with the detail in this testimony. It's just far beyond what I would think would be the normal scope of a 404(b) proceeding. So I believe it's irrelevant.

1 Q. BY MS. POLK: And, Your Honor, when Mr. Li
1 cross-examined Amayra Hamilton, he tried to
1 establish that there were differences between 2009
1 to distinguish 2009 from the earlier events. In
1 terms of 404(b), one of the differences that he
1 tried to establish was that there was a registered
1 nurse on site.

1 And the point of this examination is to
2 illustrate for the Court or prove to the Court that
2 there really were no differences, that maybe there
2 was somebody there who was a registered nurse but it
2 wasn't somebody who could take care of participants
2 in 2009 any better than staff took care of
2 participants in previous years.

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THE COURT: Ms. Polk, this really seems to be a minitrial, then. It appears to me we're just well beyond 404(b). So I can't argue that Mr. Li didn't get into some areas that were beyond 404(b). So strictly from what you can do on redirect, you're probably correct. But I want to get this back to 404(b) issues as much as possible. We need to do that.

MS. POLK: And I appreciate that, Judge. My point that this event in 2009 is just like the prior events in terms of lack of care for the participants, being on notice that the way Mr. Ray was conducting the sweat lodge ceremony was very risky, failing to take precautions or to react appropriately and in conducting a ceremony in 2009 that was as dangerous or more dangerous than '07-'08, in the previous years.

THE COURT: Mr. Li?

MR. LI: Your Honor, there is no 404(b) exception for just proving the acts conformity with prior acts, which is, essentially, what she's saying. There are very limited, narrow exceptions to 404(b).

Essentially, what Ms. Polk is saying is Mr. Ray's organization did one thing in 2006. They

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did it in 2007. They did it in 2008 and 2009. That's exactly propensity evidence. And that's not permissible.

What is permissible are very narrowly described -- and I'm not going to make the case for Ms. Polk. But she has to fit her arguments within a very narrow band of exceptions.

THE COURT: Ms. Polk, in any event, you've made a very clear offer of proof. And for purposes of 404(b) that's, essentially, all I would need. And I made a note of that. But I think it's beyond what is appropriate for 404(b). So the objection is sustained.

MS. POLK: Okay. Thank you. May I have a moment, Your Honor?

THE COURT: Yes.

(Pause in proceedings.)

MS. POLK: I just have a couple more questions, Your Honor.

THE COURT: Okay.

Q. BY MS. POLK: Mr. Mercer, you're aware that in 2009 911 was called?

MR. LI: Objection. Leading.

THE COURT: Overruled.

You may answer that.

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THE WITNESS: I was the one that told my wife to call 911. I actually told Amayra Hamilton to call it first. And then she hesitated, so I told my wife to go call 911.

Q. BY MS. POLK: In 2007 did you believe 911 should have been called?

MR. LI: Objection. Relevance.

THE COURT: Overruled.

You may answer that.

THE WITNESS: Yes.

Q. BY MS. POLK: And in 2008 did you believe 911 should be called?

A. Yes. I wasn't in a position to do that. I was just the fire keeper. I do have some -- you know -- training in CPR. But other than that -- you know. So there was always somebody that was above me to make those decisions.

Q. And who was that in 2007?

A. Usually the Dream Team and James Ray.

Q. And same as 2008?

A. Yes.

Q. Thank you, Mr. Mercer.

Thank you, Your Honor.

THE COURT: Thank you, Ms. Polk.

Mr. Li, cross-examination?

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MR. LI: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. LI:

Q. Mr. Mercer, you worked for Amayra and Michael Hamilton; isn't that correct?

A. That's correct.

Q. You didn't work for Mr. Ray or James Ray, International; correct?

A. No, I did not.

Q. Miss Hamilton and Michael Hamilton -- they had this facility called Angel Valley, and you worked there?

A. Correct.

Q. And you worked there?

A. That's right.

Q. And those were the people who were paying your bills; correct?

A. That's right.

Q. And they would tell you what to work on, is that correct?

A. Exactly.

Q. And they would tell you -- they would provide the material to you when you were making the sweat lodge?

A. Yes.

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Q. They would provide what rocks to use?

A. Yeah. They would tell us to go out and get the rocks. It would be around the area, so we'd collect them.

Q. They would tell what you wood to use for the sweat lodge?

A. Yeah. Basically.

Q. What wood to use to burn?

A. There was a pile right there that was provided for us.

Q. So now I'm going to focus for a second just generally on your role at the sweat lodges. You were the fire tender; correct?

A. Yes.

Q. How far is the fire pit from the door approximately?

A. 25 feet.

Q. And would you agree with me that there were very thick -- there was a very thick covering over the sweat lodge?

A. Yes.

Q. And would you agree with me that from 25 feet away with a very thick covering you couldn't hear everything that was going on inside?

A. That's correct.

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Q. Would you also agree with me that in general it was very noisy inside?

A. No. I wouldn't agree with that.

Q. Were people chanting?

A. Well, yeah. There was always some singing going on. It was, I guess, directed chanting and singing. Yes.

Q. And were people yelling out sort of proclamations?

A. Yes.

Q. And were people, basically, yelling at the top of their lungs that they're going to -- going to be better fathers or mothers or --

A. Yes.

Q. So it's pretty loud inside the sweat lodge?

A. It can get pretty loud sometimes. Yes.

Q. Now, just so we're clear on the difference between encouraging and forcing, you're not telling us that anybody from James Ray's organization or James Ray himself was forcing anybody to stay in any sweat lodge?

A. Not at all.

Q. And every single person who was in the sweat lodge and every one of the incidents, every

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one of the sweat lodges you observed, had the free will to come or go?

A. That's correct.

Q. And they could go back in if they wanted?

A. That's correct.

Q. If when you say "encourage," was it -- it was more along the lines of you can do this, it wasn't it?

A. Yes. You're more than that. That's the biggest line that I remember hearing. You're more than that. You can do this.

Q. Similar to go, go, go? You can do this?

A. Uh-huh.

Q. I'm sorry. Just for the record --

A. Yes.

Q. Thank you. And in terms of Mr. Ray's encouragement, when he would open the flap, it was -- I think I wrote it down when you were testifying -- he would ask if anybody wanted to come in?

A. Yeah.

Q. He didn't say you better get in here?

A. No, no. The door opens up, and he -- you know -- gets water, whatever, he gets his new water in there. And before it closes he says does anybody

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want to come back in. And that's when the Dream Team goes around to the people outside.

Q. Now, do you think folks -- folks with the Dream Team weren't abusive to any of the people outside?

A. No. Not at all.

Q. It wasn't like marine corps drill sergeants, were they?

A. No.

Q. And Mr. Ray himself wasn't like a marine corps drill sergeant, was he?

A. No, he wasn't.

Q. This is a very -- you know -- I hate to use the term touchy-feely, but this is a somewhat touchy-feely event?

A. Well, yeah. I mean, everybody goes to the sweat lodge in the spirit of love, and they're supposed to grow spiritually out of it.

Q. And, in fact, many of the rounds involve exactly those types of concepts about love --

A. Exactly.

Q. Spirituality?

A. Yes.

Q. And it wasn't about -- you know -- it wasn't screaming at people. You're no good if you

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don't do this. It wasn't that kinds of stuff, was it?

A. No.

Q. Now, the 2009 sweat lodge was actually less hot than the 2008 sweat lodge; correct?

A. I wouldn't agree with that.

Q. Did you tell Detective Diskin that there were more people in 2008 than 2009?

1 A. No. In 2009 we had to build the sweat lodge so they could get more people in there.

1 Q So you didn't tell Detective Diskin that?

1 A. You know, if it was written in that statement that I told him, then that's what I said.

1 But -- you know -- it's been over a year now so I kind of have forgotten some of the things I said.

1 Q I understand

1 A. I would go with what I told him at that time because that's when my memory was the freshest.

2 Q Okay Did you tell Detective Diskin that more rocks were used in 2008 than 2009?

2 A. I don't think so.

2 Q. Did you tell Detective Diskin that there were fewer rocks used in 2009?

2 A. I don't think so.

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Q. Did you say to Detective Diskin at this time Mr. Ray in 2009 sometimes only asked for 4 rocks a round as opposed to 10 to 12 rocks usually?

A. That's correct. Sometimes he would ask for less because the 2009 rocks were extremely hot.

Q. Did you --

MS. POLK: I'm sorry. I didn't hear.

THE WITNESS: I said that the 2009 rocks were a lot hotter than the ones in 2008.

1 Q BY MR. LI: Did you say -- so with respect to -- you deny that you said that more rocks were used in 2008 than 2009?

1 A. You know, again, I don't quite remember if I said that or not.

1 Q If we could play the audiotape of the interview. This is a transcript 8, line 13 through 19.

1 Strike that.

1 You don't remember one way or the other?

2 A. You know, with the sweat lodges and rocks, they ask for so many, so I bring them in. And I don't make a mental note how many there were.

2 Q. Now, prior to 2007, you had never experienced a sweat lodge before, correct?

2 A. Not at all.

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Q. So you had no idea what they looked like at the end -- at the end of the ceremony?

A. No.

Q. You didn't know what the experience was like?

A. No.

Q. Now, you'd agree that Gary Palisch did know?

1 A. You know, I don't know Gary's extensiveness with sweat lodges. I know that he's experienced it before. But that's all I know.

1 Q. Okay. And would you agree that Mr. Palisch or not agree -- I'm not asking you one way or another -- to decide one way or another. Would you agree -- I'm not suggesting one way or another -- that Gary Palisch has conducted a large number of sweat lodges?

1 A. I wouldn't know.

1 Q. However, Mr. Palisch was observing all of the same sweat lodges were you observing; correct?

2 A. Except for the 2009.

2 Q. Except the 2009 But the 2007? 2008?

2 A. Uh-huh.

2 Q He was observing both of those?

2 A. Yes.

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Q. Did he say to you this is a disaster? We better call 911?

A. No. He didn't say that. You know, he did say this is a disaster. But he didn't tell me to call 911.

Q. Okay. But did he say these people are in medical distress? We better get a doctor to help them?

A. No.

1 Q Now, you've described 2007 as having many people in medical distress?

1 A. Yes.

1 Q. People on the ground?

1 A. Yes.

1 Q People in convulsions?

1 A. Yes.

1 Q Could you explain to me what you mean by "convulsions."

1 A. Well, in 2008 is the one that I thought was in convulsions is when all her muscles in her body were just tensed up. She couldn't move her fingers. She couldn't move her arms. She couldn't move her legs. She was in a fetal position. She could barely open her eyes, and she couldn't move. Her muscles were locked. That's what I call a

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convulsion.

Q. Okay. So her muscles were locked --

A. Her muscles were locked and she couldn't move.

Q. And I'm not a doctor either. But I typically -- when I think of convulsions, I think of somebody throwing up and losing complete control of their body.

A. That wasn't her, but that was many other people.

Q. Now, did you tell Mr. Pahsch -- did you tell Amayra Hamilton about all the people in medical distress?

A. Yes. Many times. Actually, Amayra didn't come down to the sweat lodge but once any of those three years.

Q. Did you tell Mr. Hamilton about the people in medical distress?

A. No.

Q. Did you tell Mr. Palisch about the people in medical distress?

A. Well, yeah. He was there.

Q. Okay. And you came back to work on the next sweat lodge in 2008, correct?

A. Yes, I did. That's when I was employed by

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Angel Valley.

Q. Now, I'm going to go back for a second on the issue of the number of rocks in 2009 versus 2008. And I would ask to show Ms. Polk, if I could, the testimony?

(Pause in proceedings.)

MR. LI: May I approach the witness with the transcript?

THE COURT: You may.

Q. BY MR. LI: I'd ask you to look at this transcript and see if it refreshes your recollection as to what you told Detective Diskin in your interview with him about how many rocks were being used in 2009 versus 2008.

A. Okay.

Q. Having reviewed that transcript, is your recollection refreshed as to what you told Detective Diskin?

A. Yes, it is.

Q. Did you tell Detective Diskin that there were more rocks used in 2008 than 2009?

A. Yeah. That's correct.

Q. Did you tell Detective Diskin that there were fewer rocks used in 2009? I'm sorry. That's the same question. Did you tell Detective Diskin

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that Mr. Ray sometimes only asked for four rocks a round?

A. Only once he did that.

Q. Thanks. Now I'm going to move to 2008, the sweat lodge. Do you have it in your mind?

A. Yes.

Q. This was the sweat lodge ceremony that you described as having many people also in distress?

A. That's correct.

Q. People on the ground?

A. Yes.

Q. People in convulsions?

A. Yes.

Q. People in medical distress or in distress?

A. Yes.

Q. Now, did you tell Amayra Hamilton in 2008 about the people in distress?

A. Yes.

Q. Did you tell Mr. Hamilton, Michael Hamilton, about the people in distress?

A. I personally did not.

Q. Did you tell Mr. Palisch about the people in distress?

A. Yes.

Q. And you came back anyway in 2009 to work

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on the sweat lodge again; correct?

A. That's correct.

Q. And your testimony earlier, I believe, was that more people were in distress in 2008 than 2007 but they were pretty much the same?

A. Yeah.

Q. I'm going to -- if I could put on the overhead State's Exhibit 24. This is one of the pictures Ms. Polk showed you about the various folks that you believed were in distress?

A. Yes.

Q. And this is -- I'm going to put on the exhibit or put on the display device Exhibit 23. And this is another picture of people that you described as showing people in distress; correct?

A. Yes.

Q. Going back to Exhibit 23. If you could, using that fancy technology, point out the person that you had shown before who was unconscious. I think it was probably this one?

A. Yeah. Right there.

Q. Okay. I think I messed up your marking there. But those are the two people or one, the person who is unconscious?

A. Yeah. Right there. You know -- I don't

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know if she was unconscious right now. But I remember pulling her out.

Q. Okay. So was she unconscious?

A. When I pulled her out, yes.

Q. So I'm going to put on the display

Exhibit 42. In the binder it's No. 8.

I misspoke. I meant Exhibit 41, Your

Honor. Defense 8 or the binder tab 8.

THE COURT: All right.

1 MR. LI: I apologize, Your Honor. I've shown
1 it to opposing counsel, and I'd asked ask for
1 admission of exhibits 41, 42 and 45 and 46.

1 THE COURT: Ms. Polk?

1 MS. POLK: No objection, Your Honor.

1 THE COURT: 41, 42, 45 and 46 are admitted for
1 this hearing.

1 (Exhibits 41, 42, 45 and 46 admitted)

1 Q BY MR LI: This is 41 Now, Mr Mercer,
1 is that woman with the thumbs up -- is that the same
2 woman you were identifying in the other picture?

2 A. It looks like it.

2 Q She's not unconscious there, is she?

2 A. No. She looks all right there.

2 Q I'm putting on the --

2 Sorry, Your Honor This is Exhibit 45.

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Is that woman sitting up there and smiling at the camera -- is she the same woman that you had pointed out in the other exhibit?

A. It looks like it.

Q. And now I'm placing on the projector Exhibit 46. And the woman sitting -- so is that woman now leaned over and talking to this other person -- is that that same woman who you had described in the other picture as unconscious?

1 A. Yes.

1 Q. And the woman lying next to her appears to
1 be spraying other people?

1 A. That's correct.

1 MR. LI: I'm going to show opposing counsel the
1 other pictures.

1 MS. DO: May I approach just to expedite this?

1 THE COURT: Yes.

1 MR. LI: Your Honor, I'd move for now exhibits
1 25 through 37 into evidence.

2 MS. POLK: No objection.

2 THE COURT: 25 through 37 inclusive are
2 admitted.

2 (Exhibits 25 through 37 admitted.)

2 MR. LI: Thank you, Your Honor.

2 Q Mr Mercer, this is another scene from

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2008. Do you recognize it?

A. Yeah. It looks like the rest of the sweat lodgers.

Q. And has folks lying in the mud cooling off?

A. Yes.

Q. People walking around?

A. Exactly.

Q. People taking pictures?

1 A. Yeah.

1 Q. And that was Exhibit 25 I'm going to put
1 on the monitor Exhibit 26. And that's another
1 picture of folks after the sweat lodge ceremony?

1 A. That is correct.

1 Q People standing around?

1 A. Yes.

1 Q. Putting on the projector Exhibit 27.

1 These are more folks who were at the sweat lodge in
1 2008?

2 A. Yeah. I don't know the difference between
2 2008 and 2007. I don't know the faces, but it looks
2 the same.

2 Q. Folks walking around drinking water,
2 taking pictures of each other?

2 A. Yes.

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Q. I'm putting on the projector Exhibit 28. Another picture of folks lying in the mud cooling off?

A. Exactly.

Q. Similar to all the other sweat lodges you saw?

A. Yes.

Q. Putting on the projector Exhibit 29. Also similar to all the other pictures -- all the other sweat lodges you saw?

1 A. Yes. All the other James Ray sweat
1 lodges. Not the other ones.

1 Q All the other James Ray sweat lodges?

1 A. Yes.

1 Q. Exhibit 31 The same as all the other
1 James Ray sweat lodges?

1 A. Yup.

1 Q. Exhibit 32. Same as all the other James
1 Ray sweat lodges?

2 A. Yes.

2 Q Exhibit 33 Same as all the other James
2 Ray sweat lodges?

2 A. Yes.

2 Q There is a few that are taking place
2 before that I'm not going to put up in the interest

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of time. Here's another one, Exhibit 37.

A. We saw that one already.

Q. Same as all the other James Ray sweat lodges?

A. Yeah.

MR. LI: Your Honor, I'd move exhibits 47 through 78 into evidence.

THE COURT: Counsel?

MS. POLK: Your Honor, a lot of them are
1 duplicates of the ones that were just admitted into
1 evidence. I don't have any objection, but I don't
1 know that the Court wants to end up with multiple
1 copies of the same photographs.

MR. LI: I'll edit out the ones that are the
1 same.

THE COURT: There is no objection. So 47
1 through 78 would be admitted. However, you
1 indicated you're going through them. You won't
1 duplicate.

2 (Exhibits 47 through 78 admitted)

2 MR. LI: I will do my absolute best, Your
2 Honor.

2 Exhibit 47. Is there any way to cut down
2 the glare?

2 Q. Is this the same as all the other James

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Ray sweat lodges?

A. Yes.

Q. Exhibit 48. This fellow here smiling is
the same as the other James Ray sweat lodges?

A. Yeah. Yes.

Q. I'm now editing out the -- Exhibit 53.
Again, same as all the other James Ray sweat lodges?

A. Yes.

Q. Exhibit 54?

1 A. Yes.

1 Q. Exhibit 56?

1 A. Yes.

1 Q. Folks spraying each other the same as all
1 the other James Ray sweat lodges?

1 A. That's correct.

1 Q. I'm not going to go through all the rest
1 of them. But Exhibit 63. Same as all the other
1 James Ray sweat lodges?

1 A. Yes.

2 Q. Exhibit 64?

2 A. Yes.

2 Q. Same as all the other James Ray sweat
2 lodges?

2 A. Yes.

2 Q. I'll leave you with this one, Exhibit 62,

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this woman here flexing her muscles. Is that the
same as all the other James Ray sweat lodges?

A. Yes.

MR. LI: Your Honor, I have nothing further at
this point.

THE COURT: Thank you. Mr. Li.

Any redirect, Ms. Polk?

MS. POLK: Yes, Your Honor. Just briefly.

REDIRECT EXAMINATION

1 BY MS. POLK:

1 Q. Mr. Mercer, you were just shown a lot of
1 photographs and asked over and over if the
1 photographs that are seen from 2008 are the same as
1 all the other James Ray sweat lodges, and you said
1 over and over yes. Does that include what you saw
1 in 2009?

1 A. Well, the general look of the people in
1 2009 -- there were happy people like this in 2009
1 too. And then there was dead people in 2009, which
2 weren't any other time.

2 Q. Okay.

2 A. You know -- none of these pictures that he
2 showed me had really anybody that was really in
2 distress. When they were in distress, we weren't
2 taking pictures, we were helping them. So a lot of

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these people come around. And I think a lot of the
people in 2009 would have come around if the
paramedics weren't called except for those three.
But it's the same scene.

Q. Let's talk about that same scene. First
of all, you just said that when people were in
distress, photographs were not being taken?

A. Well, no. Because we were working on
them. You know -- we're there. We're trying to
1 help them as much as we can. And this is while --
1 you know -- probably an hour, half an hour or so,
1 after the sweat lodge. So most of the people are
1 back on their feet and moving around again -- most
1 of them. There is a few that still don't know who
1 they are or where they are or what they're doing.

1 Q. Do you feel that there were people who
1 were in distress that then were not depicted in the
1 photographs you've been shown by the attorneys?

1 A. Yes.

2 Q. At all three sweat lodges performed --
2 ceremonies performed by James Ray that you were
2 present for, were there some people who were, in
2 fact, happy after the even?

2 A. Oh, sure. There was quite a few.

2 Q. And did that go for 2009 as well?

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A. Yeah.

Q. Would you say that people were disoriented after all three of the sweat lodge events?

A. Yes. Very disoriented.

Q. And were some of the people who were disoriented also smiling?

A. Well, yeah. The one lady that I talked to who didn't know her name or where she was, she had a big smile on her face. But she still couldn't tell me what year it was or even what her name was.

Q. You were questioned, Mr. Mercer, about what you meant when you testified that people were more forcefully encouraged in 2009 to either stay in the sweat lodge or go back in. Can you explain for the Court what difference, in your opinion, did you observe in 2009 that resulted in more people staying in that sweat lodge or going back in.

A. The amount of --

MR. LI: Objection, Your Honor. Asks for speculation. Everything was fine until the last part.

THE COURT: The question has to be confined to the observations and contrasting that. So sustained.

Q BY MS POLK: Confining your answer to

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what you observed in 2009, what was different in 2009 from 2007 and 2008 in terms of the encouragement of participants to stay in the sweat lodge or come back in?

MR. LI: Objection as to foundation. Who, what.

THE COURT: Overruled.

You may answer that if you can.

THE WITNESS: They were more pushy trying to get people in, and they actually tried physically to push one lady back into the sweat lodge. But she -- by the time she got her head in the sweat lodge, she refused, she stopped and she backed up. But they were actually physically pushing her in the butt to go back in.

They would go around to the circle and encourage them. Come on. You can make it. You can do it. But -- you know -- a few of them went in and some of them didn't. One tried and didn't go back in.

Q BY MS. POLK Did you observe James Ray being more pushy in 2009 than he had been in previous years?

A. That's kind of hard to say because he was more on the inside of the sweat lodge, and I wasn't

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in very close contact with him. So I'm not sure exactly what he was saying or doing inside the sweat lodge. But what I saw was the people outside the sweat lodge -- his Dream Team.

Q. And then you were asked, Mr. Mercer, about the number of rocks in 2009 compared to earlier years and the heat in 2009 compared to earlier years. Does the heat in the sweat lodge -- does it have a direct relationship to the number of rocks in the sweat lodge?

A. It depends on how hot the rocks are. And after doing sweat lodges and being the fire keeper for several, I've gotten better at making the rocks hot. So I would say that the rocks in 2007 and 2008 weren't quite as hot as the ones going in in 2009 because the ones of 2009 were glowing red even during the day. We could see that they were extremely hot.

Q. How is it that you get the rocks to be hot?

A. Two hours before the sweat lodge even starts I pile them on a pile of wood and pile the wood over the top of the rocks and start the fire. And any time that the fire burns down so there is an exposed rock, we cover it with another piece of

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wood. So there is never an exposed rock.

And after a while I got better at it. So I could keep the rocks hotter. I could keep the fire hotter. And what they want is a glowing red rock going in there.

Q. And it's your testimony that the rocks themselves were hotter in 2009 than in previous years?

A. Yes.

Q. Did you tell James Ray that in 2009?

A. Oh, yeah.

Q. And what did he then do or say?

A. Well, he -- right before they go into the sweat lodge, they have a little ceremony on the outside of it where they burn their intentions, things that they'd like to release or things they'd like to attract in their lives.

He brought me into the middle of the circle and had me announce to everybody in the circle that -- what I had told him a few minutes ago. And that was that the rocks were hotter than they had ever been this year.

Q Then did James Ray then make a statement about it being the hottest fire ever?

A. He said something, but I can't remember

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exactly what he said.

Q. What do you remember about what he said?

MR. LI: Objection. Asked and answered.

THE WITNESS: I don't know. I don't really remember what he said.

THE COURT: It's been answered. He doesn't remember.

Q. BY MS. POLK: And then finally,

Mr. Mercer, you were asked about what you mean when

1 you say that the one lady was having convulsions,
1 and you made the statement, well, maybe that one
1 lady who was all tensed up wasn't having convulsions
1 but others were, and you were referring to 2008?

1 A. 2008, 2007, 2009. All three of them
1 people came out throwing up, sweating and they were
1 just a there were a lot of people throwing up right
1 at the door.

1 And so that's when we grab them and
1 dragged them away. They do keep throwing up for a
2 while on the side. I wasn't there to take care of
2 them then. It wasn't until after the sweat lodge
2 was done is when I can really intervene and help
2 take care of the people.

2 MS. POLK: Thank you, Mr. Mercer.

2 Thank you, Judge.

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THE COURT: Thank you, Ms. Polk.

May Mr. Mercer be excused as a witness,
Counsel?

MS. POLK: Yes.

MR. LI: Yes, Your Honor.

THE COURT: Thank you. You will be excused as
witness for this proceeding. Remember I discussed
the rule of exclusion?

THE WITNESS: Yes.

1 THE COURT: You can't talk about the case or
1 your testimony with other witnesses until the
1 hearing is completely over. Okay?

1 THE WITNESS: All right.

1 THE COURT: Thank you.

1 THE WITNESS: Thank you.

1 THE COURT: We have about 20 minutes or so.

1 MS. POLK: Yes. I can start on the next
1 witness. State calls Debby Mercer, please.

1 THE COURT: Step to the front of the
2 courtroom. Raise your right hand to be sworn.

2 DEBRA J. MERCER,
2 having been first duly sworn upon her oath to tell
2 the truth, the whole truth, and nothing but the
2 truth, testified as follows:

2 THE COURT: Please be seated here at the

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witness stand. Please begin by stating and spelling
your full name.

THE WITNESS: Debra, D-e-b-r-a, Jane, J-a-n-e,
Mercer, M-e-r-c-e-r.

THE COURT: Thank you.

Ms. Polk?

DIRECT EXAMINATION

BY MS. POLK:

Q. Good afternoon, Miss Mercer.

1 A. Hello.

1 Q. Will you please tell us the community that
1 you and your husband reside in.

1 A. Currently?

1 Q. Yes.

1 A. Cornville.

1 Q. And going back to 2007, were you residing
1 in the Cornville area?

1 A. No. I was residing in Angel Valley as
1 well as Circle City.

2 Q. Was there some point in time when you and
2 your husband were actually living at Angel Valley
2 Retreat Center?

2 A. Yes.

2 Q. And when was that?

2 A. From -- I can't remember the dates

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exactly. From March until December of -- no. Give
me a second here. We left in November of '09, and I
believe we moved there March of '07. Something like
that.

Q. And you have been involved in assisting in
some capacity sweat lodge ceremonies at the Angel
Valley Retreat Center?

A. I was involved in three of James Ray's,
but I've done several other ones.

1 Q. Where have you done the others?

1 A. Angel Valley.

1 Q. When have you done the others at Angel
1 Valley?

1 A. Throughout that time when I lived there,
1 from '06 through '09. The first one we did we
1 volunteered and we weren't living on the property
1 then.

1 Q. How many have you done that were conducted
1 by James Ray?

2 A. Three.

2 Q. And what years were those?

2 A. '07, '08 and '09.

2 Q. And the number -- what's the total number
2 again of the sweat lodges you've been involved in?

2 A. Eight. I'd say eight.

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Q. Does that include the James Ray ceremonies?

A. Yes.

Q. Have you observed differences generally speaking between James Ray ceremonies and nonJames Ray ceremonies?

A. Significant.

Q. And what are those?

A. I would say the first thing is the intention and events leading up to it as well as how the sweat lodge is performed.

Q. What do you mean when you say "intention"?

MS. DO: Your Honor, this is my witness now. I would object to this line of inquiry comparing it to noneJRI sweats because for the purpose of the hearing is to determine similarities, if any, between prior years of Mr. Ray's sweat lodges into the 2009. We were not given any notice that the state intended to offer comparison to other sweat lodges not conducted by Mr. Ray.

THE COURT: Overruled.

You may answer the question.

THE WITNESS: Answer?

THE COURT: You may. Yes.

THE WITNESS: James Ray's intent, in my

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opinion, seemed to be more about a gauntlet -- seemed to be more of a gauntlet and more of ego and to not pay attention to your body. It was a final thing in his event.

And I would say other events are much more heart based in that they're more caring, more loving. The things that happen such as -- in a typical sweat lodge a person who is having -- a woman who is having their moon, called "the period,"

is not allowed in a sweat lodge. There is -- it's very strict. And James Ray never even asks that. It's not a consideration in James Ray's sweats. And that's regarding the intent.

And in just the preparation for it, he has people on a Vision Quest beforehand, whereas most sweats people prepare in a different more healthy, holistic way.

And then the difference in the actual event would be in James Ray's sweat lodge in the first two rounds, he asks for as many rocks as most sweat lodges have in the entire event.

While they're in the sweat lodge, James Ray's events are more physically demanding, and he's more loud and more vocal than a nonJames Ray traditional sweat lodge. They're more loving.

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They're talking. They're singing. Great care is given to how the people in the lodge are feeling. There is constantly being asked are you okay? Do you need water? Does someone need to go out. It's a real -- it's a much more loving, open kind of a situation in a traditional sweat lodge.

Q. BY MS. POLK: Okay. When was the first time that you observed a sweat lodge?

A. The first James Ray sweat lodge in '07.

Q. In 2007?

A. Yes.

Q. What was your reaction to the sweat lodge ceremony conducted by James Ray conducted in 2007?

A. I was pretty shocked. I had never experienced a sweat lodge, period. And then to see that in that extreme with people in such states of distress, I couldn't imagine why people would do that in the first place and then how someone could offer that as something to do. So I was pretty shocked.

Q. What about the 2007 sweat lodge ceremony by James Ray shocked you?

A. The condition of the people during the event and after and just James Ray's general demeanor and being about it. He just seemed to be

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separate from what was going on.

Q. And what do you mean by that?

A. He was there. He was pouring the ceremony. He was in charge. He was in control. But afterwards he kind of stayed separate and walked away and was in a different area and wasn't there.

Because, like, for me it was shocking to see people on the ground -- you know -- throwing up and crying. And as a leader of an event, I would think you would go around and be talking to the people and trying to -- you know -- console them or talk to them. But he didn't. He just walked away.

Q. In 2007 what was your role? What capacity were you there in?

A. I was there as the fire tender's assistant. So the fire tender would take the rocks out of the fire, bring them to a stone, and I would brush them off and hand it off to somebody inside the sweat lodge.

Q. Okay. At what point did you see things that were shocking to you in 2007?

A. By the second round.

Q. What did you see in the second round?

A. People coming out in a state of distress and really hot and throwing up and I'd say a state

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of distress.

Q. Did you do anything -- did you personally do anything when you saw people coming out who were, in your words, in distress?

A. Yes. The first one, one of the most shocking things that happened was by the third round a lady was on her way out. She made her way around to the door of the sweat lodge. And as she stood up to get out, she passed out right in the doorway.

1 And that was my first experience.

1 I turned her over, and her eyes are
1 floating back in her head, and her face is all
1 bloody. And -- you know -- I just dragged her away
1 out of the doorway because somebody else was coming
1 up behind them throwing up. And that was shocking
1 to me. I had never -- you know -- experienced being
1 that close to somebody doing like that. And then it
1 just goes on -- you know.

1 Q To what extent did it go on?

2 A. I mean, more people -- the sweat lodge
2 continued, and more people -- you know -- would come
2 out in that same state of distress.

2 Q. About how many people would you say in
2 2007 came out of that sweat lodge in some sort of
2 state of distress?

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A. At least half.

Q. Do you know how many were in there in 2007?

A. I think -- I can't remember exactly, but my guess is, like, 58. And yeah, there was -- I counted. There was, like, 25 to 28 people out because I remember thinking -- you know -- half of the people are out of this. Why would you do this when half of the people can't handle it?

1 Q. Why would you continue on, you mean?

1 A. Yes.

1 Q Were you doing anything to assist the
1 people who were coming out as the ceremony was going
1 on -- you personally?

1 A. Yes.

1 Q. And what were you doing?

1 A. I would give them water or wipe their
1 faces if they were throwing up. Most of the time
1 they would just collapse. You know -- they'd get to
2 the door of the sweat lodge and then collapse. And
2 a lot of times it was just moving them out of the
2 way so other people could get out -- you know -- and
2 then give them towels or water. The first two years
2 there was just water. The last year there was
2 fruit.

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Q. And in 2007 before you did the first event, did you understand that was going to be expected of you?

A. No. And I think it was more of a human part of it. Because when I -- when that first started happening, I was a little panicked. And the manager of the property was on duty. And, like, what do we do? And he's, like, you let it happen. It's James Ray's event. He's the pourer. You let it happen.

1 Q Is that sweat lodge at the Angel Valley
1 Center located near a creek?

1 A. Yes.

1 Q. What creek is that?

1 A. I think it's Oak Creek.

1 Q. And in 2007 did one of the participants go
1 down to the creek?

1 A. Yes.

1 Q What do you remember about that?

2 A. He was an older gentleman. He came out
2 saying he had a heart condition and he was really
2 hot and get him to the water. Get him to the
2 water.

2 He didn't have shoes on. He just took
2 them off. And worrying about him -- you know -- I

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walked with him. And he went right in the water which -- and he was not aware of what he was doing at all. Later we talked to him, and he didn't remember doing that at all, which was common in those events. Afterwards they didn't remember what had happened right afterwards.

Q. And what happened to that older gentleman after going into the water?

1 A. I talked to him later -- you know -- that
1 day, but I don't know.

1 Q. Okay. In 2008 you were also present?

1 A. Yes.

1 Q. And in 2008 a new sweat lodge was
1 constructed; is that correct?

1 A. Yeah. The -- James Ray's team asked us to
1 build a bigger sweat lodge to accommodate more
1 people.

1 Q Did you take photographs of the
1 construction of the lodge in 2008?

2 A. While we were constructing it? Yes. The
2 kiva is what it's called. The kiva is the actual
2 willow wooden frame. And it becomes a sweat lodge
2 when the tarps are put over it.

2 Q. Okay. And I'm going to put up on the
2 overhead Exhibit 17. Is this a photograph that you

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took?
 A. Yes.
 Q. And this was the construction of the sweat lodge in 2008?
 A. Yes.
 Q. I'm going to put up on the overhead Exhibit 18. Is this also a photograph you took?
 A. Yes.
 Q. And this is the kiva you're referring to?
 1 A. Yes.
 1 Q And I'm going to put up on the overhead
 1 Exhibit 21. Is this also the construction of the
 1 sweat lodge in 2008?
 1 A. Yes.
 1 Q And another photograph that you took?
 1 A. Yes.
 1 Q And then finally I'm going to put up here
 1 Exhibit 19. Is this also the 2008 sweat lodge?
 1 A. Yes.
 2 Q And is that you?
 2 A. That's me and my dog.
 2 Q Were you able to stand up in it?
 2 A. No. Not totally. You could -- you
 2 know -- bend over, but you could not stand up in
 2 it.

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Q. In 2007 by the end of the sweat lodge, how many people would you say were left inside?
 A. About half.
 Q. And with respect to the people that you observed in distress in 2007, did you have an opinion about whether or not they should have been taken to the hospital?
 MS. DO: Objection. Foundation.
 THE COURT: Again, it's her personal
 1 observation. So overruled.
 1 THE WITNESS: My personal observation is hell,
 1 yeah. Excuse me. But yeah. It personally bothered
 1 me to see people do that. Like, in working at Angel
 1 Valley, I've learned that people do different
 1 things. It's -- you know -- not my opinion that may
 1 matter.
 1 Q BY MS. POLK: In 2008 -- we started to
 1 talk about 2008 and your being present when James
 1 Ray conducted a sweat lodge ceremony there.
 2 A. Yes.
 2 Q. Do you recall approximately how many
 2 people were present in 2008?
 2 A. I know there was 73 people around that
 2 were there. And I think 68 or so were in the lodge.
 2 Q And by the time that the ceremony in 2008

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came to an end, about how many people were still inside the sweat lodge?
 A. Again, I think there was about half and half. And that one a lot -- a lot of people were going in and out more where someone would come out and then go back in. In some cases -- you know -- they'd come out every round.
 James was not quite as controlling, I don't think, in that round. Because, like I said,
 1 people were coming out every round and going back
 1 in. And they'd get water and cool off and then
 1 they'd go back in.
 1 So -- still at the end about half of them
 1 were out and the same state of distress -- you
 1 know -- either vomiting, crying -- you know --
 1 having a hard time breathing, shivering, shaking.
 1 Q. Do you know a woman named Barbara Waters
 1 from 2008?
 1 A. I may know her, but I don't know.
 2 Q. Can you recall any specific instances of
 2 people in distress in 2008 that concerned you?
 2 A. I know a lady went into shock, I think, in
 2 both 2007 and eight where --
 2 MS. DO: Objection, Your Honor. Foundation.
 2 THE COURT: Sustained.

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Q. BY MS. POLK: In 2008 your testimony is that a lady went into shock. How do you know that?
 A. She went into a state I would consider shock where she didn't have control of her --
 MS. DO: Objection, Your Honor. Foundation.
 THE COURT: Overruled.
 THE WITNESS: She had no control over her body. Her body was seizing up -- you know -- into spasms and she had no control over her body. She
 1 was very freaked out and her body was spasming. And
 1 they ended up taking her from the area and putting
 1 her in a bathtub.
 1 And I'm -- I wasn't there for what
 1 happened after that. But I think there was a doctor
 1 present at that one. And he, basically, took care
 1 of her. And he's the one who said she was in
 1 shock. But my opinion -- I mean, she --
 1 MS. DO: Objection, Your Honor. Foundation and
 1 hearsay.
 2 THE COURT: It really is hearsay again. I'm
 2 going to consider the weight that should be given.
 2 I really can't give weight to that. So in this
 2 hearing I do want to proceed with testimony. I'm
 2 not going to consider the hearsay answer, though.
 2 Q. BY MS. POLK: Again, in 2008 what were you

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doing about people that were in distress?

A. Same thing. Providing assistance; giving water, towels; cooling them off; trying to get them out of the area. Because, like I said, consistently they would get to the door and drop from the difference in temperature from the heat from the outside -- I mean heat from the inside to the outside.

1 But consistently they would drop at the
1 door. You would be -- you know -- dragging them off
1 to tarps. Because we set up tarps to be able to
1 pull the people so they weren't laying in the dirt.

1 Q In 2008 were you ever by the door of the
1 sweat lodge?

1 A Yes. That's when I was assistant door
1 tender, I guess you would call it.

1 Q And did you ever hear James Ray in 2008
1 say anything to the participants about staying in
1 the sweat lodge?

2 A No. I remember him saying if you have to
2 go out, go out and come back in -- you know -- come
2 back in. It felt much more open about being able to
2 go out and come back in.

2 Q Much more open than what?

2 A Than 2009.

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Q. So in 2008 your testimony is that people were encouraged to come and go as they needed?

A. Yeah.

Q. Let's talk about 2009, then. You were present in 2009 when James Ray conducted a sweat lodge ceremony?

A. Yes.

Q. And what was your role in 2009?

A. I was the door tender.

1 Q. And as door tender were you able -- you
1 were at the door of the sweat lodge on numerous
1 events -- numerous times?

1 A. The whole time. I'm there the whole time.

1 MS. DO: Your Honor, I would object to this
1 line of inquiry. The court's already determined the
1 state has established the necessary offer. It's
1 gone beyond the scope of the 404(b) hearing.

1 THE COURT: Ms. Polk, for one thing, it is time
1 to recess. But, Ms. Polk, with regard to the scope
2 of the hearing, we've gotten into a lot of areas
2 that I think are beyond what's strictly necessary.
2 But the specific relevance of the last question to
2 what you want this court to consider in the 404(b)
2 context?

2 MS. POLK: Judge, the relevance would be that

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events happened in 2007 similar to 2008 and that are similar to 2009. The difference, then, is in 2009 how James Ray conducts the ceremony that, in contrast to 2007 and 2008 when people clearly are sick and in distress, by the end of the ceremony more than half of them are already out.

In 2009, in contrast, participants are strongly pressured to stay inside. And this witness can talk about the things she heard James Ray say that resulted in so many people still being in the sweat lodge by the end of the ceremony in 2009.

1 THE COURT: My question is this: I can see
1 that as a trial issue and that type of testimony.
1 But in terms of 404(b) and how these other acts may
1 show notice, knowledge, those various things, that's
1 what I'm having difficulty with.

1 We talked about this at the very start --
1 what happens in 2009 and how that's going to show
1 this -- well, those various exceptions under
2 404(b).

2 So I'm going to sustain the objection as
2 noted. You made an offer of proof, a detailed offer
2 of proof at this point. And we will recess for the
2 evening at this time.

2 Ms. Polk, what about witnesses? Well, I

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want to excuse Miss Mercer for the evening anyway.

And Miss Mercer, I've been telling the witnesses the rule of exclusion of witnesses has been invoked in this case. That means you can't talk to other witnesses about your testimony about this case in any way until this hearing is over. And this hearing is going to go into tomorrow anyway.

And I understand your husband has been a
1 witness. So there is going to be a natural
1 temptation to be discussing the case and testimony.
1 You just cannot do that.

1 THE WITNESS: I understand.

1 THE COURT: You can talk to the lawyers,
1 though. You can do that if you have any questions
1 about the rule and what it means.

1 But you understand as I've explained it?

1 THE WITNESS: Yes. I will zip my lip.

1 THE COURT: Okay. Thank you very much. You
2 may step down.

2 THE WITNESS: Thank you.

2 THE COURT: We'll resume tomorrow at
2 9:00 o'clock, then.

2 And, Counsel --

2 THE WITNESS: Do you want me tomorrow at 9:00?

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THE COURT: Yes.

(End of partial transcript.)

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STATE OF ARIZONA)
) ss: REPORTER'S CERTIFICATE
COUNTY OF YAVAPAI)

I, Mina G. Hunt, do hereby certify that I
am a Certified Reporter within the State of Arizona
and Certified Shorthand Reporter in California.

I further certify that these proceedings
were taken in shorthand by me at the time and place
herein set forth, and were thereafter reduced to
typewritten form, and that the foregoing constitutes

1 a true and correct transcript.

1 I further certify that I am not related
1 to, employed by, nor of counsel for any of the
1 parties or attorneys herein, nor otherwise
1 interested in the result of the within action.

1 In witness whereof, I have affixed my
1 signature this 21st day of November, 2010.

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1 MINA G. HUNT, AZ CR No. 50619
CA CSR No. 8335

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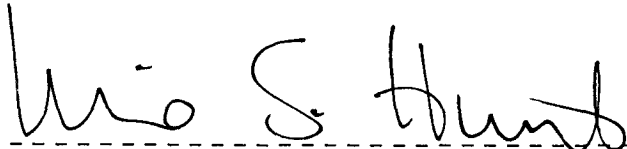
1 STATE OF ARIZONA)
2) ss: REPORTER'S CERTIFICATE
3 COUNTY OF YAVAPAI)

4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 21st day of November 2010.
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19
20

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22 
23 -----
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25 CA CSR No. 8335